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PART II—Section 3—Sub-Section (ii)

सं. 4]

नई दिल्ली, शनिवार, जनवरी 27, 1990/माघ 7, 1911

No. 4]

NEW DELHI, SATURDAY, JANUARY 27, 1990/MAGHA 7, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
separate compilation

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 1 जनवरी, 1990

स्टाम्प

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 1st January, 1990

STAMPS

का.प्र. 176.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का
2) की धारा 9 की उपधारा (1) के खंड (क) द्वारा प्रवक्त शक्तियों
का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती
है जो नेशनल हाइड्रोइलेक्ट्रिक पावर कॉर्पोरेशन लिमिटेड द्वारा जारी केवल
220 करोड़ रुपये के मूल्य के 9 प्रतिशत (कर मुक्त) डी-सीरीज के बंध
पत्रों के रूप में वर्णित बंध पत्रों पर उक्त अधिनियम के अन्तर्गत प्रभावी
है।

[सं. 73/89-स्टाम्प पत्र सं. 33/76/89-बित्री कर]

S.O. 176.—In exercise of the powers conferred by clause
(a) of sub-section (1) of section 9 of the Indian Stamp
Act, 1899 (2 of 1899), the Central Government hereby
remits the duty with which the bonds in the nature of 9
per cent (tax free) D-Series bonds of the value of rupees
two hundred and twenty crores only issued by National
Hydroelectric Power Corporation Limited are chargeable
under the said Act.

[No. 73/89-Stamp-F. No. 33/76/89-ST]

अदेश

नई दिल्ली, 2 जनवरी, 1990

स्टाम्प

कॉ.आ. 177.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा मिटी एंड इंडस्ट्रियल डेवलपमेंट कॉर्पोरेशन आफ महाराष्ट्र लिमिटेड को माला लाख और पचास हजार रु. मात्र के उस समेकित स्टाम्प शुल्क का भुगतान करने की अनुमति प्रदान करती है जो उक्त निगम द्वारा जारी किए जाने वाले पन्द्रह करोड़ रुपये के अंकित मूल्य के ऋणपत्रों के रूप में 25-25 लाख रुपये के अंकित मूल्य वाले यम संख्या 1 से 60 के ऋणपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 72/89-स्टाम्प-फा.सं. 33/81/89-वि.क.]

ORDER

New Delhi, the 2nd January, 1990

STAMPS

S.O. 177.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the City and Industrial Development Corporation of Maharashtra Limited to pay consolidated stamp duty of rupees eleven lakhs and twenty five thousand only, chargeable on account of the stamp duty on bond certificates bearing Serial numbers 1 to 60 of the face value of Rs. 25 lakhs each in the form of debentures of the face value of rupees fifteen crores to be issued by the said Corporation.

[No. 72/89-Stamp-F. No. 33/81/89-ST]

अदेश

नई दिल्ली, 3 जनवरी, 1990

स्टाम्प

कॉ.आ. 178.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा महाराष्ट्र राज्य वित्तीय निगम, बम्बई को चार लाख और पचास हजार रुपये मात्र के उस समेकित शुल्क का भुगतान करने की अनुमति प्रदान करती है जो उक्त निगम द्वारा जारी किए जाने वाले छह करोड़ और साठ लाख रु. के कुल मूल्य के ऋणपत्रों के रूप में 11.50 प्रतिशत महाराष्ट्र राज्य वित्तीय निगम बंधपत्र-2009 (55वीं श्रृंखला) पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 71/89-स्टाम्प-फा.सं. 33/84/89-वि.क.]

ORDER

New Delhi, the 3rd January, 1990

STAMPS

S.O. 178.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the Maharashtra State Financial Corporation, Bombay, to pay consolidated stamp duty of rupees four lacs and ninety five thousand only chargeable on account of the stamp duty on 11.50 per cent of Maharashtra State Financial Corporation Bonds 2009 (55th Series) in the form of debentures of the total value of rupees six crores and sixty lacs only to be issued by the said Corporation.

[No. 71/89-Stamp-F. No. 33/84/89-ST]

अदेश

नई दिल्ली, 4 जनवरी, 1990

स्टाम्प

कॉ.आ. 179.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो न्यूक्लीयर पावर कॉर्पोरेशन आफ इंडिया लिमिटेड, नई दिल्ली द्वारा जारी किए जाने वाले तीन सौ और साठ करोड़ रुपए मात्र मूल्य के 1000-1000 रुपए के 7 वर्ष यावद विमोच्य 13 प्रतिशत वार्षिक की दर से ब्याज वाले (कराग्र्य) श्रेणी "क" बंधपत्रों और 10 वर्ष यावद विमोच्य 9 प्रतिशत वार्षिक दर से ब्याज वाले (कर मुक्त) श्रेणी "बी" बंधपत्रों के रूप में वर्णित प्रामिसरी नोटों के रूप में बंधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रभावी है।

[सं. 67/89-स्टाम्प-फा.सं. 33/70/89-वि.क.]

ORDER

New Delhi the 4th January, 1990

STAMPS

S.O. 179.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899) the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as Category 'A' Bonds carrying interest at 13 per cent p.a. (Taxable) redeemable after 7 years and Category 'B' Bonds carrying interest at 9 per cent p.a. (tax free) redeemable after 10 years of Rs. 1000 each to the value of rupees three hundred and sixty crores only to be issued by Nuclear Power Corporation of India Limited, New Delhi are chargeable under the said Act.

[No. 67/89-Stamp-F. No. 33/70/89-ST]

अदेश

स्टाम्प

कॉ.आ. 180.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो हरियाणा वित्तीय निगम द्वारा जारी किए जाने वाले क्रमशः तीन सौ दो लाख और पचास हजार रुपए (32वीं श्रृंखला), एक सौ और पैंसठ लाख रुपए (33वीं श्रृंखला) और दो सौ सेवान्ति लाख और पचास हजार रुपए (34वीं श्रृंखला) के मूल्य के प्रामिसरी नोटों (32वीं, 33वीं तथा 34वीं श्रृंखला) के रूप में वर्णित बंधपत्रों पर उक्त अधिनियम के अन्तर्गत प्रभावी है।

[सं. 68/89-स्टाम्प-फा.सं. 33/72/89-वि.क.]

ORDER

STAMPS

S.O. 180.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes (32nd, 33rd and 34th Series) of the value of Rupees three hundred two lacs and fifty thousand, (for 32nd Series), Rupees one hundred and sixty five lacs (for 33rd Series) and Rupees two hundred forty seven lacs and fifty thousand (for 34th Series) respectively to be issued by Haryana Financial Corporation, Chandigarh are chargeable under the said Act.

[No. 68/89-Stamp-F. No. 33/72/89-ST]

अदिश

(आर्थिक कार्य विभाग)

स्टाम्प

(बैंकिंग प्रभाग)

को.आ. 181.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का

नई दिल्ली, 29 दिसम्बर, 1989

2) की धारा 9 की उपधारा (1) क खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उस शुल्क को माफ करती है जो आवास और नगर विकास निगम लिमिटेड द्वारा जारी किए जाने वाले 150 करोड़ रुपये के 9 प्रतिशत (कर मुक्त) विमोक्ष्य आर्गिक्वर्नोय आवास तथा नगर विकास निगम लिमिटेड गैररे बांडों (पब्लीक श्रुखला) और 100 करोड़ रु. के 9 प्रतिशत (कर मुक्त) विमोक्ष्य असंवरिक्वर्नोय आवास तथा नगर विकास निगम लिमिटेड गैररे बांडों (पब्लीक श्रुखला) जिसका कुल मिलाकर मूल्य दो सौ रुपये और पचास करोड़ रुपये मात्र है, पर उक्त अधिनियम के अन्तर्गत प्रभाव है।

को.आ. 183.—राष्ट्रीय बैंक (प्रबंध और प्रकरणे उद्भव) योजना, 1970 का धारा 3 का उपधारा (ज) के अनुसरण में केन्द्रीय सरकार, वित्त मन्त्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग), नई दिल्ली के संयुक्त सचिव श्री एम. सी. सत्यवादी को श्री बी. पी. साहनी के स्थान पर एन.डी.ए. पंजाब नेशनल बैंक के निदेशक के रूप में नियुक्त करता है।

[सं. ए. फ. 9/6/89-वो. प्रो. 1]

एम. एल. सीतारामन, अवर सचिव

[फा.स. 69/89-स्टाम्प-फा.सं. 33/74/89-वि.क.]

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 29th December, 1989

ORDER

STAMPS

S.O. 181.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of 9% (Tax free) redeemable non-convertible Housing and Urban Development Corporation Limited Shelter Bonds (Series IV) of Rs. 150 crores and 9% (Tax free) redeemable non-convertible Housing and Urban Development Corporation Limited Urban Bonds (Series I) of Rs. 100 crores of the total value two hundred and fifty crores only to be issued by Housing and Urban Development Corporation Limited, New Delhi are chargeable under the said Act.

S.O. 183.—In pursuance of sub-clause (h) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 the Central Government hereby appoints Shri M. C. Satyawadi, Joint Secretary, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a Director of Punjab National Bank vice Shri V. P. Sawhney.

[F. No. 9/6/89-B.O.II]

M. S. SEETHARAMAN, Under Secy.

नई दिल्ली, 4 जनवरी, 1990

[No. 69/89-Stamp-F. No. 33/74/89-ST]

अदिश

स्टाम्प

को.आ. 182.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) क खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एन.डी.ए. उस शुल्क को माफ करती है जो आवास तथा नगर विकास निगम लिमिटेड, नई दिल्ली द्वारा जारी किए जाने वाले इकतादस करोड़ रुपये मात्र मूल्य के 11.5 प्रतिशत 2009 (35 श्रुखला) के रूप में वर्णित स्वामियों के स्वरूप में श्रवणों पर उक्त अधिनियम के अन्तर्गत प्रभाव है।

को.आ. 184.—बैंकिंग विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एन.डी.ए. घोषणा करती है कि उक्त अधिनियम की धारा 19 की उपधारा (2) के उपबन्ध मुनाहेड बैंक ऑफ इंडिया, कलकत्ता पर 31 दिसम्बर, 1990 तक उग सीमा तक लागू नहीं होगी जहां तक उनका संबंध निष्कार के रूप में सीमां बगल हैल्थ एंड क्लीकल वर्क्स लि. का 30 प्रतिशत से अधिक की प्रचल शेर पूंजी की उक्त धारिता से है।

[सं. 15/22/87 म. वि. III]

New Delhi, the 4th January, 1990

[सं. 70/89-स्टाम्प-फा.सं. 33/73/89-वि.क.]

वी.के. स्वामिनाथन, अवर सचिव

ORDER

STAMPS

S.O. 182.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of debentures described as 11.5%—2009 (XXXV Series) of the value of rupees forty one crores only to be issued by Housing and Urban Development Corporation Limited, New Delhi are chargeable under the said Act.

S.O. 184.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section (2) of section 19 of the said Act shall not apply to United Bank of India, Calcutta for a period upto the 31st December, 1990 in respect of its holding of shares in excess of 30% of the paid up share capital of M/s. Bengal Health and Chemical Works Ltd., as pledgee.

[No. 15/22/87 B.O.III]

नई दिल्ली, 5 जनवरी, 1990

को.आ. 185.—बैंकिंग विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक की सिफारिश पर, एन.डी.ए. घोषणा करती है कि उक्त अधिनियम की धारा 9 के उपबन्ध लागू होगा बैंक लि. पर 14 दिसम्बर, 1990 तक की अवधि तक इन्के द्वारा पंजाब राज्य

[No. 70/89-Stamp-F. No. 33/73/89-St]

V. K. SWAMINATHAN, Under Secy.

के जिला होशियारपुर के प्रेमगढ़ में अधिग्रहित की गई भू संपत्ति पर लागू नहीं होंगे।

[सं. 15/15/87 बी.ओ.-III]

प्राण नाथ, अवर सचिव

New Delhi, the 5th January, 1990

S.O. 185.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Lari Doab Bank Ltd. for a period upto the 11th September, 1990 in respect of the landed property held by it at Premgarh, District Hoshiarpur, State of Punjab.

[No. 15/15/87-B.O. III]

PRAN NATH, Under Secy.

कार्यालय आयकर आयुक्त

कलकत्ता, 1 मिनम्बर, 1989

अधिसूचना संख्या 10/89-90

क्र.प्र. 186. आयकर अधिनियम, 1961 (1961 का 43) की धारा 120 की उपधारा 1 और 2 द्वारा और मुख्य आयकर आयुक्त (प्रशा.), कलकत्ता के फाइल संख्या, सी.सी. ए/2 पी/13/88-89 की अधिसूचना संख्या: 1/88-89 तारीख 30-3-89 तथा अधिसूचना संख्या 11/तारीख 16-6-88 द्वारा प्राधिकृत प्रदत्त शक्तियों का प्रयोग करते हुए और इस कार्यालय के तारीख 28-6-1988 की अधिसूचना संख्या 12/88-89 के आगे, मैं आयकर आयुक्त, पश्चिम बंगाल 1 कलकत्ता, एतद्द्वारा एक नया प्रभार आयकर अधिकारी, वार्ड-5, गिलिगुरी का सृजन करता हूँ।

मैं निदेश देता हूँ कि आयकर अधिकारी, वार्ड-5, गिलिगुरी आयकर आयुक्त, जलपाईगुरी रेंज के अन्तर्गत पड़ने वाले मामलों में से निविष्ट मामलों के बारे में अधिकारिता प्रयोग करते और और जलपाईगुरी रेंज की अधिकारिता के अधीन होंगे।

परन्तु उक्त अधिनियम की धारा 124 अथवा धारा 127 के अधीन यदि मेरे द्वारा कोई निदेश/आदेश जारी होत तब तक उक्त आयकर अधिकारी इस अधिसूचना के अधीन अपने कृत्या का पालन करेंगे।

यह अधिसूचना 11-09-1989 से लागू होगी।

[एफ. संख्या क्षेत्र-1/89-90/प.बं. 1/1282]

के.पी. मिश्र, आयकर आयुक्त

(Office of the Commissioner of Income Tax)

Calcutta, the 1st September, 1989

NOTIFICATION NO. 10/89-90

S.O. 186.—In exercise of power conferred by Section 1 and 2 of Section 120 of the Income-tax Act, 1961 (43 of 1961) and the powers conferred by the authorisation issued by the Chief Commissioner of Income-tax (Admn.), Calcutta by Notification No. 1/88-89 dated 30-3-88 and Notification No. 11/88-89 dated 16-6-88 in file No. CCA/2P/13/88-89 and in continuation of this office Notification No. 12/88-89 dated 28-6-88, I, the Commissioner of Income-tax, West Bengal-I, Calcutta, hereby create a new charge of Income-tax Officer, Ward-5, Siliguri.

I direct that the Income-tax Officer, Ward-5, Siliguri shall exercise jurisdiction in respect of the cases assigned out of the cases falling within the jurisdiction of Deputy Commissioner of Income-tax, Jalpaiguri Range and shall be under

the jurisdiction of the Deputy Commissioner of Income-tax, Jalpaiguri Range.

Provided that the aforesaid Income-tax authorities shall perform their functions under this Notifications subject to any direction/order that may hereafter be issued by me U/S 124 or 127 of the said Act.

This Notification shall come into force on and from 11-9-1989.

[F. No. Juris-1/89-90/WB-1/1282]

K. P. SINGH, Commissioner of Income Tax

वाणिज्य मंत्रालय

मुख्य नियंत्रक आयात-निर्यात का कार्यालय

आदेश

नई दिल्ली, 2 जनवरी, 1990

क्र. आ. 187—श्री टी-मथरा (मान्यता प्राप्त कैमरामन) सी-19 नई दिल्ली, साउथ एक्सपोज़ेशन पार्ट-2 नई दिल्ली को (1) विडियो कैसेट यू-मैटिक 3/4" 1/2" (2) सिनेमेटोग्राफिक फिल्म (अप्रदर्शित) 16 एमएम (3) आधियो टेप्स (कैसेट तथा ग्रान्ड फूलम) (4) स्टेशनरी (5) शिपिंग बेग्स आदि के आयात के 50,000- (पचास हजार रुपये मात्र) के लिए एक सीमाशुल्क निकासी परमिट सं. पी जे 3079180 दिनांक 8-8-89 दिया गया था। आवेदक ने उपर्युक्त सीमाशुल्क निकासी परमिट की अनूति प्रति जारी करने के लिए हम आधार पर आवेदन किया है कि मूल सीमाशुल्क निकासी परमिट खो गया है गम हो गया है। आगे यह भी उल्लेख किया है कि मूल सीमाशुल्क निकासी परमिट हविरा गांधी अन्तर्राष्ट्रीय विमानचतन, नई दिल्ली के पास पंजीकृत था और 9,6151 रुपये के लिए सीमाशुल्क निकासी परमिट के मूल्य का उपयोग किया गया है। इस प्रकार 40,385 रुपये की राशि के मूल्य का उपयोग करना शेष है।

2. अपने तर्कों के समर्थन में लाइसेन्सहोल्डर ने उपर्युक्त व्यापिक प्राधिकारी के समक्ष विधिवत शपथ लेकर एक हजफनामा पेश किया है। तब नुसार मैं समुष्ट हूँ कि आवेदक से मूल सीमाशुल्क निकासी परमिट सं. पी जे 3079180 दिनांक 8-8-89 खो गया है। 7-12-1955 के यथासमाहित आयात (नियंत्रण) आदेश 1955 की उपधारा 9(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री टी. मथरा सी-19 नई दिल्ली साउथ एक्सपोज़ेशन पार्ट-2 नई दिल्ली को जारी उक्त मूल सीमाशुल्क निकासी परमिट सं. पी जे 3079180 दिनांक 8-8-89 को एतद्द्वारा रद्द किया जाता है।

3 सीमाशुल्क निकासी परमिट की अनूति प्रति पार्टी को अलग से जारी की जा रही है।

[क्राईन सं. 2/17/89-90 एमएमएस/316]

माया देवी कैम, उप मुख्य नियंत्रक आयात-निर्यात,
उक्त मुख्य नियंत्रक आयात-निर्यात

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 2nd January, 1990

S.O. 187.—Shri T. Mathra, (Accredited Cameraman), C-19, N.D.S.E. Part-II, New Delhi was granted a CCP No. P/1/3079180 dated 8-8-89 for Rs. 50,000 (Rupees fifty thousand only) for import of (1) Video Cassettes U-Matic 3/4" 1/2" (2) Cinematographic Film (Un-exposed) 16

M.M.' (3) Audio Tapes (Cassettes and On Spools) (4) Stationery, (5) Shipping Bags etc. The applicant has applied for issue of Duplicate copy of the above mentioned Customs Clearance Permit on the ground that the original CCP has been misplaced/lost. It is further stated that the original CCP was registered with the Customs at Indira Gandhi International Airport, New Delhi and was partly utilised for Rs. 9,615 leaving balance of Rs. 40,385.

2. In support of their contention, the licensee has filed an affidavit duly sworn before appropriate judicial authority. I am accordingly satisfied that the original CCP No. P/J/3079180 dated 8-8-89 has been lost by the applicant. In exercise of the powers conferred under Sub-clause 9(1)(d) of the Import (Control) Order, 1955 dated 7-12-56 as amended from time to time, the said original CCP No. P/J/3079180 dated 8-8-89 issued to Shri T. Mathra, C-19, N.D.S.E. Part-II, New Delhi is hereby cancelled.

3. A duplicate copy of the Customs Clearance Permit is being issued to the party separately.

[F. No. 2/17/89-90/MLS/346]

MAYA D. KEM, Dy. Chief Controller
of Imports & Exports

For Chief Controller of Imports & Exports

संयुक्त मुख्य निर्यातक आयात निर्यात का कार्यालय

(केन्द्रीय लाईसेंसिंग क्षेत्र)

निर्यात आदेश

नई दिल्ली, 26 दिसंबर, 1989

का. आ. 189.—संसर्ग अमर ऑटो इंडस्ट्रीज 19 बी/2 एम मार्केट स्ट्रॉक रोड नई दिल्ली-5 को डायनो आरमेचर विद माई (बीयरिंग 6202 एंड 6203)=2000 नम का निर्यात करने के लिए 180800 रु के एक. ओ. बी. मूल्य के आधार के साथ (1) कॉपर स्क्रैप-3060 कि.ग्रा. (2) बीयरिंग नं. 6202 तथा 6203=4000 पीस (3) पॉसी आरसी शाट-315 कि.ग्रा. के आयात के लिए 103165 रुपये का एक अधिम लाइसेंस सं-पं.के/3145230 दि. 30-1-86 तथा डी/ईईसी बुक सं. 015880 परांत किया गया था।

फर्म ने अधिम लाइसेंस सं-पं.के/3145230 दिनांक 30-01-1986 की सोमा शुल्क प्रयोजन प्रति तथा डी/ईईसी बुक सं-015880 दिनांक 31-01-86 बिना उपयोग के वापिस कर दी है।

अज्ञात तथा संशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-55 के भाग 9(ड) के अंतर्गत प्रस्तुत अधिकांशों का प्रयोग करते हुए मैं (1) आयात उता प्रथम कंडीशन (कॉपर स्क्रैप) तथा (2) डी/ईईसी बुक के निर्यात का आदेश देता हूँ।

[का. सं. एडवांस/लाई/यूटीईएम/258/एम-86 एएलएस-2 सं.एम/3540]

एन. डी. अग्निहोत्री, उप मुख्य

नियंत्रक आयात व निर्यात,

संयुक्त मुख्य निर्यातक आयात व निर्यात

(Office of the Joint Chief Controller of Imports & Exports)

(Central Licensing Area)

"CANCELLATION ORDER"

New Delhi, the 26th December, 1989

S.O. 188.—M/s. Amar Auto Industries, 19, B/2, New Market, New Rohtak Road New Delhi-5 was granted an Advance Licence No. P/K/3145230 dated 30-1-86 and DEEC Book No. 015880 for Rs. 103165 for import of (1) Copper Scrap 3060 Kgs. (2) Bearing No. 6202 and

6203=4000 Pcs. (3) PCRC Sheet 315 Kgs. with obligation for FOB value of Rs. 180800 to export Dynamo Armature with side (Bearing 6202 and 6203)=2000 Nos.

The firm has returned Customs Purpose copy of Advance Licence No. P/K/3145230 dated 30-1-86 and DEEC Books No. 015880 dated 31-1-86 unutilised.

In exercise of the powers conferred on me under section 9(d) of the Import (Control) Order, 1955 dated 7-12-55 as amended upto date, I hereby order cancellation of the said Advance Licence (CCP only) and DEEC Book.

[F. No. ADV/LIC/UES/258/AM. 86]

ALS.II/CLA/3540]

N. D. AGNIHOTRI, Dy. Chief Controller
of Imports & Exports,

for Jt. Chief Controller of Imports & Exports.

उद्योग मंत्रालय

(कम्पनी कार्य विभाग)

नई दिल्ली, 5 जनवरी, 1990

का. आ. 189.—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम, 1969 (1969 का 54) की धारा 26 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा मैं कोठारी इंडस्ट्रियल कारपोरेशन लि. जिसका पंजीकृत कार्यालय कोठारी बिल्डिंग बाक्स नं. 3332 नंगम्बकम हाई रोड मद्रास 600034 में है के पंजीकरण के निरस्तकरण को अधिसूचित करता है क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग "क" अध्याय-III के उपबंध अब लागू नहीं होते हैं।

[सं. 16/1/90 एम 3 पंजीकरण संख्या 13/12/76]

MINISTRY OF INDUSTRY

(Department of Company Affairs)

New Delhi, the 5th January, 1990

S.O. 189.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of M/s. Kothari Industrial Corporation Limited having its registered office at Kothari Building, Box No. 3332, Nungambakkam High Road, Madras-600034 the said undertaking being undertaking to which the provisions of Part A Chapter III of the said Act no longer apply.

[No. 16/1/90-M.III/Registration No. 13/12/76]

नई दिल्ली, 18 जनवरी, 1990

का. आ. 190.—एकाधिकार तथा अवरोधक व्यापारिक व्यवहार अधिनियम 1969 (1969 का 54) की धारा 26 की उपधारा (3) के अनुसरण में केन्द्रीय सरकार एतद्वारा मैं सूरत इलेक्ट्रीसिटी कंपनी लि. जिसका पंजीकृत कार्यालय इलेक्ट्रीसिटी हाउस, स्टेशन रोड, पो. बा. नं. 271 सूरत 395093 में है के पंजीकरण के निरस्तकरण को अधिसूचित करता है क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग "क" अध्याय-III के उपबंध अब लागू नहीं होते हैं।

[सं. 16/1/90 एम-3/पंजीकरण संख्या 15/18/81]

New Delhi, the 8th January, 1990

S.O. 190.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of M/s. Surat Electricity Company Limited, having its registered office at Electricity House, Station Road, P.O. Box No. 271, Surat-395003 the

said undertaking being undertaking to which the provisions of Part A Chapter III of the said Act no longer apply.

[No. 16/1/90-M.III/Registration No. 1546|81]

का. आ. 191.—एकधिकार तथा अंतर्गता व्यवहार अधिनियम 1969 (1969 का 54) को धारा 26 का उपधारा (3) के अनुसरण से केंद्रीय सरकार एतद्वारा मै. बास्टर बेक एंड कंपनी (इंडिया) लि. जिसका पंजीकृत कार्यालय "आर्काडिया" 10th फ्लोर, 195, नारिमन प्वाइंट-400021 में है के पंजीकरण के निरस्तकरण को अधिसूचित करता है क्योंकि उक्त उपक्रम ऐसे उपक्रमों में से है जिन पर उक्त अधिनियम के भाग "क" अध्याय-III के उपबंध अद्य लागू नहीं होते हैं।

[सं. 16/1/90/एम-III/पंजीकरण संख्या 834/84]

शशिभूषण मिश्र, ज्य. सचिव

S.O. 191.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the cancellation of the registration of M/s. Dr. Beck & Company (India) Ltd. having its registered office at 'Arcadia', 10th Floor, 195, Nariman Point, Bombay-400021 the said undertaking being undertaking to which the provisions of Part A Chapter III of the said Act no longer apply.

[No. 16/1/90-M.III/Registration No. 1834|84]

S. B. SINGH, Dy. Secy.

पेट्रोलियम और रसायन संवर्धन

(पेट्रोलियम और प्राकृतिक गैस विभाग)

नई दिल्ली, 3 जनवरी 1990

का. आ. 192.—तेल उद्योग (विकास) अधिनियम 1974 (1974 का 47) को धारा 3 का उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कश्चाय सरकार एतद्वारा तत्काल प्रभाव लागू हो अगले आदेश होने तक के लिए तेल उद्योग विकास बोर्ड में श्री ब्रह्म दत्त के स्थान पर श्री एस.एस. गुरुपदस्वामी पेट्रोलियम और रसायन मंत्रालय के अध्यक्ष के रूप में नियुक्त करता है।

[संख्या जो-35012/5/89-वित्त-II]

एन. शिवसुब्रमन्यम ज्य. सचिव

MINISTRY OF PETROLEUM & CHEMICALS

(Department of Petroleum & Natural Gas)

New Delhi, the 3rd January, 1990

S.O. 192.—In exercise of the powers conferred by sub-section (4) of section 3 of the Oil Industry (Development) Act, 1974, (47 of 1974), the Central Government hereby appoints, with immediate effect and until further orders, Shri M. S. Gurupadaswamy, Minister of Petroleum and Chemicals, as the Chairman of Oil Industry Development Board, vice Shri Brahm Dutt.

[No. G-35012/5/89-Fin.II]

N. SIVASUBRAMANIAN, Addl. Secy.

ऊर्जा मंत्रालय

(कोयला विभाग)

नई दिल्ली, 2 जनवरी, 1990

का. आ. 193.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि इससे उपाबद्ध अधिसूची में वर्णित भूमि से कोयला अभिप्राप्त करने की संभावना है ;

अतः अब, केंद्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त भूमि में कोयला का पूर्वेक्षण करने के अर्ज प्रमाण की सूचना देती है।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. सी-1(ई) III/एफआर/450-09-89 तारीख 20 सितम्बर, 1989 का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड : (राजस्व विभाग) कोयला इस्टेट, सिविल लाइन्स नागपुर-440001 (महाराष्ट्र) के कार्यालय में या कलकट्टर, नागपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउन्सिल हाउस स्ट्रीट, कलकत्ता के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि से हितवद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट नक्शों चार्टों और अन्य दस्तावेजों को इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन के भीतर राजस्व अधिकारी, वेस्टर्न कोलफील्ड्स लिमिटेड, कोयला इस्टेट, सिविल लाइन्स नागपुर-440001 (महाराष्ट्र) को परिदत्त करेंगे।

अनुसूची

सावनेर फेज III-ब्लाक

नागपुर क्षेत्र

नागपुर (जिला महाराष्ट्र)

क्र. सं.	ग्राम का नाम	पटवारी सर्किल म.	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	बोरगांव	31	कालमेश्वर	नागपुर	379.20	भाग
2.	नीलगांव	31	कालमेश्वर	नागपुर	356.09	भाग
3.	दुधावडी	12 ए	कालमेश्वर	नागपुर	306.48	भाग
4.	पंजारा	12ए	कालमेश्वर	नागपुर	158.74	संपूर्ण
5.	पारसोडी	12ए	कालमेश्वर	नागपुर	277.57	भाग
6.	सावंगी	10	सोनर	नागपुर	103.00	भाग

कुल क्षेत्र : 1581.08 हेक्टर (लगभग)

या 3906.85 एकड़ (लगभग)

सीमा वर्णन :

क-ख रेखा "क" बिन्दु से प्रारंभ होती है, सावंगी, दुधावडी, नीलगांव और बोरगांव (घौने) होकर जाती है और बिन्दु "ख" पर मिलती है।

ख-ग रेखा बोरगांव (घौने) और अदासा ग्रामों की सम्मिलित सीमा के साथ साथ जाती है और "ग" बिन्दु पर मिलती है।

ग-घ रेखा बोरगांव (घौने) और दापेवाडा (बुजक) ग्रामों की सम्मिलित सीमा के साथ जाती है, फिर नीलगांव की भावत बाहरी सीमा में होकर गुजरती है और तब पारसोडी ग्राम होकर जाती है और "घ" बिन्दु पर मिलती है।

घ-क रेखा पंजारा और पानुवाली, सोतोली और दुधावडी ग्रामों की सम्मिलित सीमा के साथ साथ जाती है, फिर सावंगी ग्राम होकर गुजरती है और आरंभिक बिन्दु "क" पर मिलती है।

[सं. 43015/24/89-एस.एस. डब्ल्यू.]

MINISTRY OF ENERGY

(Department of Coal)

New Delhi, the 2nd January, 1990

S.O. 193.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notices of its intention to prospect for coal therein.

The plan bearing No. C-1(E)/III/FR/450-0989 dated the 20th September, 1989 of the area covered by this notification can be inspected at the Office of the Western Coalfields Limited (Revenue Department) Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) or at the Office of the Collector, Nagpur (Maharashtra) or at the Office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Revenue Officer, Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur-440001 (Maharashtra) within ninety days from the date of publication of this notification.

SCHEDULE
SAONER PHASE-III BLOCK
NAGPUR AREA
DISTRICT NAGPUR (MAHARASHTRA)

Serial number	Name of village	Patwari circle No.	Tahsil	District	Area in hectares	Remarks
1.	Borgaon	31	Kalmeshwar	Nagpur	379.20	Part
2.	Nilgaon	31	Kalmeshwar	Nagpur	356.87	Part
3.	Dudhabardi	12A	Kalmeshwar	Nagpur	306.48	Part
4.	Panjara	12A	Kalmeshwar	Nagpur	138.74	Part
5.	Parsodi	12A	Kalmeshwar	Nagpur	277.57	Part
6.	Saongi	10	Saoner	Nagpur	103.00	Part
Total area:					1581.08 hectares	
					(approximately)	
					or	
					3906.85 acres	
					(approximately).	

Boundary description :

- A-B** Line starts from point 'A' through villages Saongi, Dudhabardi, Nilgaon and Borgaon (Dhote) and meets at point 'B'.
- B-C:** Line passes along the common boundary of villages Borgaon (Dhote) and Adasa and meets at point 'C'.
- C-D:** Line passes along the common boundary of villages Borgaon (Dhote) and Dhapewada (Bujruk) then passes through outer boundary of village Nilgaon partly and then proceeds through village Parsodi and meets at point 'D'.
- D-1:** Line passes along the common boundary of villages Panjara and Pan-ubali, Sonoli and Dudhabardi then passes through village Saongi and meets at starting point 'A'.

[No. 43015-24/89-LSW]

का.आ. 194.—केन्द्रीय सरकार ने, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) के अधीन भारत सरकार के ऊर्जा मंत्रालय (कोयला विभाग) की अधिसूचना सं. का. आ. 906 तारीख 29 अप्रैल, 1989 द्वारा, उस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र में 25.98 एकड़ (लगभग) या 10.51 हेक्टर (लगभग) माप की भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी ;

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि में कोयला अभिप्राप्य है ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उसमें संलग्न अनुसूची में वर्णित 25.98 एकड़ (लगभग) या 10.51 हेक्टर (लगभग) माप की भूमि और उसके खनन अधिकारों का अर्जन करने के अपने आशय की सूचना देती है ।

टिप्पण : 1. इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. राजस्व/32/8 ता. 2 अगस्त, 1989 का निरीक्षण उपायुक्त हजारीबाग या कोयला नियंत्रक, 1, काउन्सिल हाउस स्ट्रीट, कलकत्ता या सेन्ट्रल कोलफील्ड्स लिमिटेड (राजस्व अनुभाग) दरभंगा हाउस, रांची (बिहार) के कार्यालय में किया जा सकता है ।

टिप्पण : 2. कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबन्ध है :—

अर्जन के प्रति आपत्ति :

“8. (1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने के तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने से बारे में आपत्ति कर सकेगा।

स्पष्टीकरण—इस धारा के अर्थान्वयित किसी व्यक्ति की यह आपत्ति नहीं मानी जाएगी कि वह इस भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति द्वारा नहीं की जानी चाहिए।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी आपत्तिकर्ता को स्वयं सूने जाने का या विधि व्यवसायी द्वारा सूतबाई का अवसर देगा और ऐसी सभी आपत्तियों को सूने के पश्चात् और ऐसी अनिश्चित जांच, यदि कोई हो, करने के पश्चात् जो वह आवश्यक समझता है वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिकारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए यह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते।”

टिप्पण : 3. केन्द्रीय सरकार ने कोयला नियंत्रक, 1. कार्डमिल हाउस स्ट्रीट, कलकत्ता को उक्त अधिनियम के अधीन सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

ब्लॉक “ई” (दामोदर नदी तल)

(दक्षिण कर्णपुरा कोयला क्षेत्र)

जिला हजारीबाग (बिहार)

आरेखण सं. राजस्व/32/89

तारीख : 2-3-98

(अर्जित की जाने वाली भूमि दर्शित)

सभी अधिकार

क्र. सं.	ग्राम	थाना	थाना सं.	जिला	क्षेत्र	टिप्पणियां
1.	सीरा	रामगढ़	24	हजारीबाग	25.98	भाग

कुल क्षेत्र : 25.98 एकड़ (लगभग)

या 10.51 हेक्टर (लगभग)

ग्राम सीरा में अर्जित किए जाने वाले प्लॉट का संख्यांक : 685 (भाग)

सीमा वर्णन :

क-य रेखा दामोदर नदी की केन्द्रीय रेखा के भाग के साथ साथ जाती है (जो कि ग्राम सीरा और गिरी की भागतः सामान्य सीमा है)।

ख-य रेखा दामोदर नदी में से होकर जाती है (जो ग्राम सीरा में प्लॉट सं. 685 और 1 को भागतः सामान्य सीमा है)।

ग-य रेखा ग्राम सीरा में दामोदर नदी में से होकर जाती है।

घ-य रेखा ग्राम सीरा में दामोदर नदी के भागतः दाएं किनारे के साथ-साथ जाती है।

ड-य रेखा दामोदर नदी में से होकर जाती है (जो ग्राम सीरा और मयाल की भागतः सामान्य सीमा है)।

[गं. 13015/15/88-एल. एम. डब्ल्यू.]

सी. आर. राउ, अधीक्षक सचिव

NOTIFICATION

S.O. 194.—Whereas by the notification of the Government of India in the Ministry of Energy (Department of Coal) No. S.O. 906 dated the 29th April, 1989, under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to prospect for coal in 25.98 acres (approximately) or 10.51 hectares (approximately) of the land in the locality specified in the scheduled to that notification;

And whereas the Central Government is satisfied that coal is obtainable of the said land;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 25.98 acres (approximately) or 10.51 hectares (approximately) described in the Schedule appended hereto;

Note 1.—The plan No. Rev/32/89, dated the 2nd August, 1989 of the area covered by the notification may be inspected in the Office of the Deputy Commissioner, Hazaribagh or in the Office of the Coal Controller, 1, Council House Street, Calcutta-1 or in the Office of the Central Coalfields Ltd.; (Revenue Section), Darbhanga House, Ranchi (Bihar).

Note 2.—Attention is hereby invited to the provisions of section 8 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), which provides as follows :—

Objection to acquisition :

“(1) Any person interested in any land in respect of which a notification under section 7 has been issued

may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation.—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different report in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.”

Note 3.—The Coal Controller, 1, Council House Street, Calcutta has been appointed by the Central Government as the competent authority under the Act.

SCHEDULE

BLOCK—‘E’ (in Damodar River Bed)
(South Karanpura Coalfields)
District Hazaribagh (Bihar).

Drg. No. Rev/32/89

Dated :—2-8-89

(Showing lands to be acquired)

All rights

Serial number	Village	Thana	Thana number	District	Area	Remarks
1.	Saunda	Ramgarh	24	Hazaribagh	25.98	Part

Total Area :—25.98 acres or 10.51 hectares (approximately).

Plot number to be acquired in village Saunda :—685 (Part).

Boundary description :—

- A-B line passes along the part Central line of Damodar River (which is part common boundary of village Saunda and Gidi).
B-C Line passes through Damodar River (which is the part common boundary of plot numbers 685 and 1 in village Saunda).
C-D line passes through Damodar River in village Saunda.

- D-E line passes along the part right bank of Damodar River in village Saunda.
- E-A line passes through Damodar River (which is the part common boundary of villages Saunda and Sayal) and meets at point 'A'.

[No. 43015/15/88-LSW]

B.B. RAO, Under Secy

हिन्दू मंत्रालय

(हज सेल)

नई दिल्ली 15 जनवरी 1990

का.मा. 195 --हज समिति अधिनियम 1959 (1959 का 51) के खंड-4 और 5 के साथ पठित खंड-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए लोक सभा के अध्यक्ष ने लोक सभा के सदस्य श्री कमालुद्दीन शहमद और श्री शकील उल्लाहमान को श्री हुसैन दलवाई और श्री हफिज मोहम्मद सिद्दीक के स्थान पर हज समिति के लिए मनोनीत किया है।

[सं.मा.मम(हज)/118/1/2/89]

क. पी. फ़ैबियन, सचिव मंत्रालय (जोड़/हज)

MINISTRY OF EXTERNAL AFFAIRS

(Haj Cell)

New Delhi, the 15th January, 1990

S.O. 195.—In exercise of the powers conferred under section 3, read with sections 4 and 5 of the Haj Committee Act, 1959 (51 of 1959), the Speaker, Lok Sabha has nominated Shri Kamaluddin Ahmed, Member, Lok Sabha and Shri Shakeel Rahman, Member, Lok Sabha to the Haj Committee vice Shri Hussain Dalwai and Shri Hafiz Mohammed Siddiq.

[M (Haj)/118-1/2/89]

K. P. FABIAN, Jt. Secy. (GD/Haj)

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 10 नवम्बर, 1989

का.मा. 196--भारतीय पत्तन स्वास्थ्य नियम, 1955 के नियम--2 के खण्ड 5 के उपखण्ड (क) के अनुसरण में तथा इस मंत्रालय की दिनांक 20 दिसम्बर, 1983 की इसा संख्या की अधिवृत्तिका के अधिक्रमण में उन बातों के सिवाय अधिक्रान्त करने हुए जिन्हें ऐसे अधिक्रमण से पहले किया गया है अथवा करने से लोप किया गया है केन्द्रीय सरकार एतद्वारा इसके साथ अनुबंधित अनुसूची के क्रम संख्या 1 के सामने कालम (2) में निर्दिष्ट अधिकारी की उसके कालम (3) में ऐसी प्रविष्टि में निर्दिष्ट प्रमुख पत्तन का पदेन स्वास्थ्य अधिकारी नियुक्त करती है।

अनुसूची

क्रम सं.	अधिकारी और उसके कार्यालय का नाम	पत्तन
1	2	3
1.	मुख्य चिकित्सा अधिकारी, पत्तन स्वास्थ्य अस्पताल, न्यू मंगलोर	न्यू मंगलोर

[स.ओ. 12020/8/81-आई.एच. (वॉल II)]

श्रीमती. अमरजित कौर, अवर सचिव

MINISTRY OF HEALTH & FAMILY WELFARE

New Delhi, the 10th November, 1989

S.O. 196...In pursuance of sub-clause (a) of clause (5) of rule 2 of the Indian Port Health Rules, 1955, and in supersession of this Ministry's Notification of even number, dated the 26th December, 1983 except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officer specified in column (2) against serial No. 1 of the Schedule annexed hereto to be ex-officio Health Officer of the Major Port specified in corresponding entry in column (3) thereof.

SCHEDULE

Sl. No.	Office and his office name	Port
(1)	(2)	(3)
1.	Chief Medical Officer Port Health Hospital. New Mangalore.	New Mangalore.

[No. O-12020/8/81-IH (Vol.-II)]

Smt. AMARJIT KAUR, Under Secy.

नई दिल्ली, 2 जनवरी, 1990

का.आ. 197.—पंजाबी विश्वविद्यालय पटियाला की सिनेट ने, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ख) के अनुसरण में, डा. आर. एस. थिंद को इस अधिसूचना का जारी किए जाने की तारीख से भारतीय आयुर्विज्ञान परिषद् का सदस्य निर्वाचित किया है।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 3 की उपधारा (1) के अनुसरण में, भारत सरकार के भूतपूर्व स्वास्थ्य मंत्रालय की अधिसूचना सं. का. आ. 138 (सं. 5-13/59-एम आई), 1 तारीख 9 जनवरी, 1960 का निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, "धारा 3 की उपधारा (1) के खंड (ख) के अधिनियमित शर्ष के अंतर्गत नाम सं. 28 और उससे संबंधित प्रविष्टि के स्थान पर निम्नलिखित सं. सं. और प्रविष्टि रखी जाएगी, अर्थात् :—

"28. डा. आर. एस. थिंद

आयुर्विज्ञान महापाठ्यशाला

और प्रधानाचार्य,

गुरु गोविंद सिंह चिकित्सा महाविद्यालय

फरिदकोट (पंजाब)"

[संख्या बी. 11013/15/87-एम ई (पी)]

आर. श्रीनिवासन, अवर सचिव

New Delhi, the 2nd January, 1990

S.O. 197.—Whereas in pursuance of the provision of clause (b) of Sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), Dr. R. S. Thind has been elected by the Senate of Punjabi University Patiala to be a member of the Medical Council of India with effect from the date of issue of this Notification.

Now, therefore, in pursuance of sub-section (1) of section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Govt. of India in the late Ministry of Health, No. S.O. 138 (No. 5-13/35-M1), dated the 9th January, 1960, namely :—

In the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3" for serial number 28 and the entry relating thereto, the following serial number and entry shall be substituted, namely :—

"28. Dr. R. S. Thind,

Dean,

Faculty of Medicine & Principal,

Guru Govind Singh Medical College,

Faridkot (Punjab)".

[No. V-11013/15/87-ME(P)]

R. SRINIVASAN, Under Secy.

ग्रहरी विकास मंत्रालय

नई दिल्ली, 9 जनवरी, 1990

का. सा. 198.—दिल्ली नगर नगर आयोग अधिनियम, 1973 (1974 का पहला) की धारा 5 की उपधारा (5) के साथ पठित धारा 4, द्वारा प्रस्तुत शक्तियों का प्रयोग करने हुए और भारत सरकार, ग्रहरी विकास मंत्रालय के दिनांक 30 नवम्बर, 1988 की अधिसूचना सं. ए-11013/4/84-डी सी-1/बी/VI/1 के अधिनियम में, केन्द्रीय सरकार द्वारा 27-12-89 के आ. आ. के. टक्कर के स्थानान्तरित होने के

कारण, उनके स्थान पर श्री पी. पी. श्रीवास्तव को दिल्ली नगर नगर आयोग का, अंशकालिक सदस्य के रूप में नियुक्त करता है।

[सं. ए-11013/4/84-डी सी V/बी/VI/1 की]

अरुण देव, अवर सचिव

MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 9th January, 1990

S.O. 198.—In exercise of the powers conferred by Section 4 read with sub-section (5) of Section 5 of the Delhi Urban Art Commission Act, 1973 (1 of 1974) and in supersession of the Notification of the Government of India, Ministry of Urban Development No. A-11013/4/84-DDVB/VI dated the 30th November, 1988, the Central Government hereby appoints Shri P. P. Shrivastav as part time Member of the Delhi Urban Art Commission vice Shri R. K. Takkar, transferred with effect from 27-12-89.

[No. A-11013/4/84-DDVB/VI/IB]

ARJAN DEV, Under Secy.

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली 2 जनवरी 1990

का.आ. 199.—केन्द्रीय सरकार, राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1973 के नियम 10 के उप-नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के अंतर्गत निम्नलिखित विद्यालयों/कार्यालयों को, जिनमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यमाध्यम प्राप्त कर लिया है, अधिसूचित करता है :—

1. केन्द्रीय विद्यालय
मथुरा कैम्प (उ.प्र.)
जम्-281002
2. केन्द्रीय विद्यालय
सी. आर. पी. एफ.
वतनाला, जम्-181113
3. केन्द्रीय विद्यालय रायचूर.
क्षेत्रीय कार्यालय,
मन्ना मिल्स के सामने,
भोपाल-462001
4. केन्द्रीय विद्यालय
बमाना, गांधी-प्रकाशपुर
जम्-180003
5. केन्द्रीय विद्यालय,
अलवर, मोती हंगरी के
पास, अलवर-301001
(राजस्थान)
6. केन्द्रीय विद्यालय,
मुनसुनु-333001
(राजस्थान)
7. केन्द्रीय विद्यालय,
सी. सी. आई.
राजवन (मिर्जापुर)
हि.प्र.

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Dept. of Education)

New Delhi, the 2nd January, 1990

8. केन्द्रीय विद्यालय नं. 2,
कै. रि. पु. ब. समूह,
केन्द्र-2, अजमेर-305005

9. केन्द्रीय विद्यालय,
एकलिंगगढ़, फोरस्ट.
पोस्ट बॉक्स नं. 158,
उदयपुर (राज.)

10. केन्द्रीय विद्यालय नं. 1,
वायुसेना, जोधपुर

11. केन्द्रीय विद्यालय,
जम्मू छावनी-181101
(जम्मू व कश्मीर)

12. केन्द्रीय विद्यालय,
वायुसेना क्षेत्र
हलवाड़ा (पंजाब)-141106

13. केन्द्रीय विद्यालय,
सीरा साहिब,
जम्मू व कश्मीर

14. केन्द्रीय विद्यालय,
नं. 1, गान्धी नगर
जम्मू (जम्मू व कश्मीर)

15. केन्द्रीय विद्यालय
मनीरी-इलाहाबाद
पिन-212212

16. केन्द्रीय विद्यालय,
गोला बान्द डिपो,
दप्पर-140506

17. केन्द्रीय विद्यालय,
वायुसेना केन्द्र,
बरनाला (पंजाब)

18. केन्द्रीय विद्यालय,
नैनी-इलाहाबाद
(उ.प्र.)

19. केन्द्रीय विद्यालय
(एन. टी. पी. सी.)
शक्ति नगर
जिला-मिर्जापुर (उ.प्र.)

20. केन्द्रीय विद्यालय,
पंजाब लाइन्स,
मेरठ कैन्ट

21. केन्द्रीय विद्यालय संगठन,
(जम्मू क्षेत्र)
1-डी/सी, गार्डन नगर,
जम्मू-180004

22. केन्द्रीय विद्यालय-2,
वायुसेना स्थल
देवलाही-422501

S.O. 199.-In pursuance of sub-rule (4) of the Rule 10 of the Official Languages (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following Vidyalayas/Offices of the Deptt. of Education in the Ministry of Human Resource Development, where more than 80 per cent staff has acquired working knowledge of Hindi :-

1. Kendriya Vidyalaya,
Mathura Cantt (U.P.),
P. Code. 281002.

2. Kendriya Vidyalaya,
C.R.P.F. Ben Taleb,
Ferozpur-151123.

3. Kendriya Vidyalaya, Sangathan,
Regional Office,
Opp. Maids Mill,
Bhopal-462031

4. Kendriya Vidyalaya,
Dammara, Vill. Akalpur,
Jamnui-180002.

5. Kendriya Vidyalaya,
Alwar,
Near Moti Dungri,
Alwar-301002 (Raj.).

6. Kendriya Vidyalaya,
Jhunjhunu-333001,
(Rajasthan).

7. Kendriya Vidyalaya,
C.C.I. Rajban (Simla),
Himachal Pradesh.

8. Kendriya Vidyalaya, No. 2,
C.R.P.F. Group Centre-2,
Ajmer-305005.

9. Kendriya Vidyalaya,
Eklinggarh, Forest,
Post Box-158,
Udaipur (Raj.).

10. Kendriya Vidyalaya No. 1
Air Force,
Jodhpur.

11. Kendriya Vidyalaya,
Jammu Cantt.-181101,
Jammu & Kashmir.

12. Kendriya Vidyalaya,
Air Force Area,
Halwara (Ph.)-141106

13. Kendriya Vidyalaya,
Meera Shahib,
Jammu & Kashmir.

14. Kendriya Vidyalaya,
No. 1, Gandhi Nagar,
Jammu (Jammu & Kashmir).

15. Kendriya Vidyalaya,
Manauri (Allahabad),
P. N-212212.

16. Kendriya Vidyalaya,
Ordnance Depot,
Dappar-140506

17. Kendriya Vidyalaya,
Air Force Centre,
Barnala (Punjab).

18. Kendriya Vidyalaya,
Naini, Allahabad (U.P.).

[सं. ई. 11011/21/अन-रा.प.]
मदन मोहन दत्त, सहायक निदेशक (अ. भा.)

19. Kendriya Vidyalaya,
(N.T.P.C.) Shaktinagar,
Distt. Mirzapur (U.P.).

20. Kendriya Vidyalaya,
Punjab Lines,
Meerut-Cantt.

21. Kendriya Vidyalaya Sangathan,
(Jammu Region),
I-D/C. Gandhinagar,
(Jammu Region),

22. Kendriya Vidyalaya-2,
Air Force Station,
Devlaly-422501.

[No. E-11011/21/89-OLU]

MADAN MOHAN DARGAN, Asstt. Director (OI)

असम मंत्रालय .

नई दिल्ली, 20 दिसम्बर, 1989

का. आ. 200 :- केन्द्रीय सरकार, राजधानी (सब के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में कर्मचारी राज्य बीमा निगम के क्षेत्रीय कार्यालय गोवा को जिसके 80 प्रतिशत कर्मचारी बृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करता है।

[संख्या ई-11012/1/88-एस. एम.-1]

ए. के. भट्टारai, अधीन सचिव

MINISTRY OF LABOUR

New Delhi, the 29th December, 1989

S.O. 200.—In pursuance of sub-rule (4) of Rule 10 of the official Language (use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the Regional Office of the Employees' State Insurance Corporation, Goa, the 80 per cent staff whereof have acquired a working knowledge of Hindi.

[No. E-11012/1/88-SSI]

A. K. BHATTARAI, Under Secy.

का. आ. 201 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैगर्ज ई. सी. लिम. की बेज्झीह-मैथानी-पटमोहना कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-89 को प्राप्त हुआ था।

S.O. 201.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employer in relation to the management of Bejdih-Methani-Patmohna Colliery of M/s E.C. Ltd. and their workmen, which was received by the Central Government on 27-12-89

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL. AT CALCUTTA

Reference No. 72 of 1986

PARTIES :

Employers in relation to the management of Bejdih-Methani-Patmohna Colliery of M/s. ECL.

AND

Their Workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty.—Presiding Officer.

APPEARANCES :

On behalf of employer.—Mr. M. N. Kar, Advocate.

On behalf of workmen.—None

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012/13/86-D.IV(B) dated 20th October, 1986, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :—

"Whether the demand of the Colliery Mazdoor Union for employment of the dependents of S/Shri Ahin Patra, Loading Clerk and Motar Harijan, UG Loader of Bejdih-Methani-Patmohna Collieries of M/s. E.C. Ltd., who were declared medically unfit on 16-6-84 is justified? If so, to what relief the workmen are entitled?"

2. When the case is called out today, Mr. M. N. Kar, Advocate appears for the employer. Nobody appears for the workmen. A petition has however been received from the Union on 19th October, 1989, stating therein that the Union is no longer interested to proceed with the present reference and the Union has prayed for a "No Dispute Award". Mr. Kar appearing for the employer has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of Mr. Kar appearing on behalf of the employer, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta.

The 20th December, 1989.

[No. L-19012/(13)/86-D.IV. B/TR(C. II)]

SUKUMAR CHAKRAVARTY, Presiding Officer

का. आ. 202 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैगर्ज ईस्टर्न कोलफील्ड्स लि. की भानोरा कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 27-12-89 को प्राप्त हुआ था।

S.O. 202.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhanora Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 27-12-89

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 14 of 1988

PARTIES :

Employers in relation to the management of Bhanora
Colliery of M/s. Eastern Coalfields Ltd
AND
Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty.—Presiding Officer.

APPEARANCES :

On behalf of employer.—Mr. B. N. Lala, Advocate.

On behalf of workmen.—None.

STATE : West Bengal.

INDUSTRY : Coal

AWARD

By Order No. L-19012(64)/86-D.IV(B) dated 30th January, 1987, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the Management of Bhanora Colliery of M/s. ECL., P. O. Charanpur, Distt. Burdwan was justified in not regularising Sri Deepen Hazra to the post of Junior Telecommunication Inspector in Tech. & Supervisory Gr. B ? If not, to what relief the workman is entitled and from what date ?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the employer. Nobody appears for the workmen. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the present reference and the Union has prayed for a "No Dispute Award". Mr. Lala appearing on behalf of the employer has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of Mr. Lala appearing on behalf of the employer, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta,

The 20th December, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(64)/86-D.IV(B)/IR(C.II)]

का. आ. 203 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार व सैसर्ज एम. ई. सी. एल. की काटकोना कोलियरी, बँकूपुर एरिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-89 को प्राप्त हुआ था।

S.O. 203.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Katkona Colliery of Baikunthpur Area of M/s. SECL and their workmen, which was received by the Central Government on 27-12-89.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
COM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(98) of 1989

PARTIES :

Employers in relation to the management of M/s. South Eastern Coalfields Limited, Katkona Colliery, P.O. Katkona Colliery (Via Patna), District Surguja (M.P.) and their workmen, Sri Sheikh Shamim, Cat. V Driver, Via Oraga, Post Baikunthpur, District Surguja (M.P.)

APPEARANCES :

For Workman—Shri J. P. Singh.

For Management—Shri R. Menon, Advocate.

INDUSTRY : Coal Mine DISTRICT : Surguja (M.P.)

AWARD

Dated : December 18, 1989

By Notification No. L-22012(173)/88-D-4 dated 5th May, 1989 the Central Government, Ministry of Labour, has referred the following dispute to this Tribunal, for adjudication :—

"Whether the action of the Management of Katkona Colliery of Baikunthpur Area of M/s. SECL in dismissing their workman Sri Sheikh Shamim, Cat. V Driver vide letter No. SOM/KTN/29(B)/87/2449 dated 26/28-10-87, is legal and justified? If not to what relief the workman concerned is entitled and from what date?"

2. In this case parties were directed to file their statement of claim along with the documents, list of witnesses and affidavits. They were also directed to supply the copy of their respective statement of claim along with the list of documents and witnesses to the other party. Today i.e. 18-12-1989 was for filing rejoinder, admission and denial of documents and for filing of affidavits of witnesses which the parties propose to examine in support of their respective claim.

3. But instead of filing the statement, document etc, etc, parties have filed a Memorandum of Settlement dated 2-11-1989 duly signed by Shri M. B. Khare, Personnel Manager, T. K. Bose, Dy. Personnel Manager, Baikunthpur Area and S/Shri J. P. Singh, President R.K.K.M.S. Baikunthpur Area and Sheikh Shamim, workman concerned S/Shri R. Menon, Advocate and J. P. Singh verified the settlement before me today. The terms of the settlement as incorporated in the settlement are as under :—

1. Agreed that Shri Sheikh Shamim shall be taken in employment as Driver, Cat. V at the initial basic pay of Cat. V on the following terms :

- (1) That he will be given employment subject to his medical fitness.
- (2) That he will be posted in any of the collieries/ areas of SECL outside Baikunthpur Area, and the decision of the management for his place of posting shall be binding on the workman/union.
- (3) That the period of his absence on account of dismissal from service till he resume his duty at the place of posting as decided by the management shall be treated as "Dies non" on the principle of No Work No Pay.
- (4) That the workman and the union will not claim any back wages or any other relief whatsoever and the case will not be reopened in future.

(5) That this settlement is in full and final settlement of all the claim of the workman/union.

4. I have gone through the above terms of settlement and I am satisfied that the terms of settlement are fair, just and lawful. I therefore record my award in terms of the above mentioned settlement. No order as to costs.

Dated: 18-12-1989

V. N. SHUKLA, Presiding Officer.
[No. L-22012(173)/88-D.IV.B/IR(C.II)]

नई दिल्ली, 1 जनवरी, 1990

का. अ. 204 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स ई. सी. लिम. की केन्द्रा कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 28-12-89 को प्राप्त हुआ था।

New Delhi, the 1st January, 1990

S.O. 204.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kendra Colliery of M/s. E. C. Ltd. and their workmen, which was received by the Central Government on 28-12-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

Reference No. 23/88

PARTIES :

Employers in relation to the management of Kendra Colliery of M/s. Eastern Coalfields Ltd.

AND

Their Workmen

PRESENT :

Shri N. K. Saha, Presiding Officer.

APPEARANCES :

For the Employers—Sri P. K. Das Advocate.

For the Workmen—Sri C. D. Dwevedi, Advocate.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 20th December, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 has referred the dispute to this Tribunal for adjudication under Order No. L-24012(220)/87-D.IV(B) dated the 15th February, 1988.

SCHEDULE

"Whether the action of the Management of Kendra Colliery of M/s. E.C. Ltd., P.O. Pandaveswar, Dist. Burdwan (W.B.) in denying pay protection in respect of S/Sri Madan Singh, Rakesh Singh, and Mewa Lal Security Guards, is justified? If not, to what relief are the concerned workmen entitled?"

2. During the pendency of the case, on 12-12-89 Sri C. D. Dwevedi, Advocate representing the union has filed a petition signed by the Vice-President of the union submitting therein that the concerned union is no longer interested to pursue the instant matter. In the petition the union has also prayed for a 'no dispute' award in this case. Sri P. K. Das, Advocate representing the management has no objection in this regard.

3. Upon consideration of the petition and the submission of the parties this Tribunal has no other alternative but to pass a 'no dispute' award and accordingly a 'no dispute' award is passed.

This is my Award.

N. K. SAHA, Presiding Officer
[No. L-24012(220)/87-D.IV.B/IR(C.II)]

का. अ. 205 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स ई. सी. लिम. की मधुसूदनपुर कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-12-89 को प्राप्त हुआ था।

S.O. 205.—In pursuance of section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of Madhusudanpur Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 28-12-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

Reference No. 16/89

PARTIES :

Employers in relation to the management of Madhusudanpur Colliery of M/s. E.C. Ltd.

AND

Their Workman

PRESENT :

Shri N. K. Saha, Presiding Officer.

APPEARANCES :

For the Employers—Sri P. K. Das Advocate.

For the Workman—Sri C. D. Dwevedi, Advocate.

INDUSTRY : Coal.

STATE : West Bengal

Dated, the 20th December, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the dispute to this Tribunal for adjudication vide Order No. L-22012(159)/88-D.IV(B) dated the 14th March, 1989.

SCHEDULE

"Whether the action of the Management of Madhusudanpur Colliery of M/s. E.C. Ltd. P.O. Dakshin-dhanda (Burdwan) in denying increment for the year 1979 to Sri K. K. Sinha Overman is justified? If not, to what relief the workman concerned is entitled?"

2. During the pendency of the case, on 13-12-89 Sri C. D. Dwevedi, Advocate representing the union has filed a petition signed by the Vice-President of the union submitting therein that the concerned union is no longer interested to pursue the instant matter. In the petition the union has also prayed for a 'no dispute' award in this case. Sri P. K. Das, Advocate representing the management has no objection in this regard.

3. Upon consideration of the petition and the submission of the parties, this Tribunal has no other alternative but to pass a 'no dispute' award and accordingly a 'no dispute' award is passed.

This is my award.

N. K. SAHA, Presiding Officer
[No. L-22012(159)/88-D.IV.B/IR(C. II)]

का. घा. 206 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार व मैसर्स ई. सी. लि. की डारुला कोलियरी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अससोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-12-89 को प्राप्त हुआ था।

S.O. 206.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of Darula Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 28-12-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

Reference No. 8/88

PARTIES :

Employers in relation to the management of Darula Colliery of M/s. Eastern Coalfields Ltd.

AND

Their Workmen

PRESENT :

Sri N. K. Saha, Presiding Officer.

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.

For the Workman—Sri C. D. Dwevedi, Advocate.

INDUSTRY : Coal. STATE : West Bengal

Dated, the 20th December, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-24012(216)/87-D.IV(B) dated the 15th January/9th February, 1988

SCHEDULE

"Whether the action of the Management of Purushottam-pur Colliery of M/s. E.C. Ltd., P.O. Pandaveswar, Dist. Burdwan in denying increment to Sri Abhiram Singh, Pump Khalasi from 1980 onwards and not

protecting his wages on his regularisation as Pump Khalasi, is justified? If not, to what relief the concerned workman is entitled?"

2. During the pendency of the case, on 12-12-89 Sri C. D. Dwevedi, Advocate representing the union has filed a petition signed by the Vice-President of the union submitting therein that the concerned union is no longer interested to pursue the instant matter. In the petition the union has also prayed for a 'no dispute' award in this case. Sri P. K. Das, Advocate representing the management has no objection in this regard.

3. Upon consideration of the petition and the submission of the parties, this Tribunal has no other alternative but to pass 'no dispute' award and accordingly a 'no dispute' award is passed.

This is my Award.

N. K. SAHA, Presiding Officer
[No. L-24012(216)/87-D.IV.B/IR(C. II)]

नई दिल्ली, 3 जनवरी, 1990

का. घा. 207 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार व मैसर्स ईस्टर्न कोलफील्ड्स लिम. की पारेसीया कोलियरी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-90 को प्राप्त हुआ था।

New Delhi, the 3rd January, 1990

S.O. 207.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Parasea Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 1-1-90.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 2 of 1985

PARTIES :

Employers in relation to the management of Parasea Colliery of M/s. Eastern Coalfields Limited.

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty—Presiding Officer.

APPEARANCES :

On behalf of employer : Mr. S. K. Biswas, Deputy Personnel Manager with Mr. A. Chatterjee, Deputy Personnel Manager.

On behalf of workmen : Mr. B. S. Azad, General Secretary of the Union.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012(37)/84-D.IV(B) dated 23rd January, 1985, the Government of India, Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Parasea Colliery of M/s. E.C. Ltd., P.O. Toposi, Distt. Burdwan (WB) in dismissing their workman Shri Jagrup Tewari, Attendance Clerk, w.e.f. 10-7-82, is justified? If not, to what relief the workman concerned is entitled?"

2. The case as made out by the Khan Shramik Congress, espousing the cause of the workman Jagrup Tewari in their written statement is briefly as follows: The concerned workman who was the Attendance Clerk in the Parasea Colliery of the employer was charge-sheeted on 23-4-1982 on the ground that the concerned workman indecently behaved with Mr. M. R. Agarwal, the Agent of the Colliery and assaulted him by giving a slap on his face in his office room on 23-4-1982 and the concerned workman was dismissed from service on the basis of the report given by the Enquiry Officer after holding the domestic enquiry against the concerned workman on the said charge. The concerned workman went to the office of the Agent in the morning of 23-4-1982 to discuss regarding the Sunday's job which was performed by the concerned workman. The concerned workman had his discussion with the Agent in this respect and his behaviour was not at all indecent. It has been denied that the workman assaulted the Agent Mr. Agarwal by giving a slap on his face. The employer on a false charge got the matter enquired by an officer who held the domestic enquiry in violation of the principle of natural justice by not giving the opportunity to the concerned workman to take assistance in the domestic enquiry from a co-worker of his choice and by not giving him the opportunity to defend himself. The employer accepted the illegal report of the Enquiry Officer and dismissed the workman concerned from the service with effect from 10-7-1982 as an act of victimisation. The dismissal of the concerned workman was unjustified and accordingly the concerned workman is entitled to reinstatement to his service with all consequential benefits.

3. The employer has denied the allegation of the Union by filing the written statement. According to the employer, the concerned workman entered into the office of the Agent Mr. Agarwal at about 8.10 A.M. on 23-4-1982 and asked him in a very indecent manner as to why his deployment on non-productive Sundays on payment of overtime wages had been stopped. The Agent Mr. Agarwal told the concerned workman that his deployment on Sundays like that of others had been stopped by the management for effecting the reduction in payment of overtime wages in the colliery. At this, the concerned workman flared-up and gave a slap on the face of Mr. Agarwal and engaged himself in a scuffle with Mr. Agarwal for assaulting him further. Mr. Agarwal was however saved from further assault as the concerned workman was taken out from his office room by Seodeep Singh, the Office Peon of the colliery. The concerned workman was accordingly charge-sheeted and on a proper domestic enquiry the Enquiry Officer found him guilty of the charges levelled against him and the employer on the basis of the report of the Enquiry Officer and on the materials in the proceedings of the enquiry, dismissed the concerned workman from service in accordance with the Standing Orders. The concerned workman having been rightly dismissed from service, is not entitled to any relief.

4. In a reference of this nature arising out of the dismissal of the concerned workman on the basis of the domestic enquiry, this Tribunal first heard the preliminary issue with regard to the validity of the domestic enquiry itself. This Tribunal by its order dated 18-12-1989 found that the domestic enquiry held by the Enquiry Officer in respect of the charges levelled against the workman was valid. The Tribunal accordingly heard the case on merit.

5. The moot question for determination before this Tribunal is whether the materials in the proceedings of the domestic enquiry have established the charges levelled against the concerned workman and whether the report of the Enquiry Officer finding the concerned workman guilty of the charges stands to scrutiny. It is the well settled principle of law that Section 11A of the Industrial Disputes Act, 1947 has given the power to the Tribunal to come to an independent decision on reappraisal of the evidence and the materials given before the Enquiry Officer in a domestic enquiry, both

with regard to the establishment of the charges and the quantum of punishment.

6. The proceedings of the domestic enquiry are collectively Ext. M-2. The charge-sheet on the basis of which the domestic enquiry was held is Ext. M-2/1. The charges are (1) disorderly and indecent behaviour of the concerned workman with the Agent Mr. M. R. Agarwal and (2) assault upon Mr. Agarwal, at about 8.10 A.M. on 23-4-1982 in the office room of Mr. M. R. Agarwal himself. The reply to the charges as given by the delinquent workman is Ext. M-2/2. The delinquent workman denied the charges levelled against him but has admitted that he went to the Agent Mr. Agarwal on the alleged date and time to have discussion for Sunday jobs and his approach was not indecent at any time.

7. The employer has examined the Agent Mr. Agarwal who is the alleged victim of assault and indecent behaviour besides other witnesses namely, Mohan Gope, the Security Guard of the Colliery, Seodeep Singh, the Office Peon of the Colliery, S. N. Mishra, the Store Keeper of the Colliery and Hiralal Chakraborty, the Survey Officer of the Colliery. The delinquent workman has given his own statement before the Enquiry Officer and has allowed himself to be cross-examined. The delinquent workman however did not examine any other witness on his behalf.

8. Mr. Agarwal, the Agent of the Colliery has stated in his evidence that on 23-4-1982 at about 8 A.M. the delinquent workman who is the Attendance Clerk came to his office room and asked him why his Sunday deployment had been stopped. His evidence further shows that he told the delinquent workman that as a measure of general reduction, his Sunday deployment was stopped and that at this, all of a sudden the delinquent workman became furious and slapped Mr. Agarwal. The evidence of Mr. Agarwal further discloses that in the meantime Seodeep Singh, the Office Peon, came inside the office room and took out the delinquent workman from the office. Mr. Agarwal has further stated in his evidence that a number of office staff assembled in the office compound and that officers of the Colliery also came there. His evidence further discloses that F.I.R. was lodged with the Police Station and that a written report was also sent to the General Manager KNT area. It appears from the proceedings that the delinquent workman did not cross-examine Mr. Agarwal.

9. It appears that the Agent Mr. Agarwal lodged the F.I.R. with the nearby Police Station and submitted a written report to the General Manager immediately after the incident. Curiously enough, the employer has not produced the copy of the F.I.R. which was given to the maker of the F.I.R. himself and the report submitted by the Agent to the General Manager. The said F.I.R. and the written report would have thrown much light in the matter. The Enquiry Officer does not appear to have taken any step for getting the copy of the F.I.R. and the written report from the employer.

10. On careful perusal of the evidence of Mr. Agarwal, it appears that Mr. Agarwal did not say in his evidence that any other person was present in his office room when the delinquent workman entered into his office room on the date of alleged occurrence and that he saw the entire incident. His evidence has only indicated that the Office Peon Seodeep Singh entered into the office room and took out the agitated delinquent workman from inside the office room.

11. Mr. Agarwal gave his evidence on 25-5-1982. On the next date of hearing, namely, on 3-6-1982 the employer examined all other witnesses, Seodeep Singh, the Office Peon has stated in his evidence that at about 8.15 A.M. while he was sitting outside the office room of the Agent, Mr. Agarwal, he heard some noise inside the office room and that he entered into the office room to ascertain the reasons for such gormal. His evidence further shows that he found the delinquent workman inside the office room and that the said delinquent workman was asking the Agent why his Sunday attendance had been encircled and that the Agent requested him not to be furious. His evidence further shows that the delinquent workman was in very furious mood and that he was not ready to hear anything in his regard from the Agent. This Office Peon has further stated in his evidence that at

that time he alongwith another Security Guard dragged the delinquent workman from inside the office room. Mohan Gope is the Security Guard. His evidence shows that on the date of occurrence at the alleged time and place, after hearing golmal he entered into the Agent's office room and found that the delinquent workman was shouting and that the Agent was standing near his chair. He has corroborated the other evidence of the Office Peon Seodeep Singh.

12. It may be mentioned here that none of the aforesaid witnesses who dragged the delinquent workman outside from the office room of the Agent has stated in their evidence that they saw the delinquent workman either slapping the Agent Mr. Agarwal or scuffling with him. Their evidence however establishes that the concerned workman was shouting while talking with the Agent about the stoppage of his deployment on Sundays. Both the aforesaid witnesses have also not stated that on their going inside the office room of the Agent after hearing the golmal, they saw any other person inside the office room excepting the delinquent workman and the Agent Mr. Agarwal.

13. S. N. Mishra, the Store Keeper of the Colliery, who gave his evidence on 3rd June, 1982 has however stated in his evidence that he was inside the office room of the Agent Mr. Agarwal at about 8 A.M. on 23-4-1982 for some discussion with the Agent in connection with the day-to-day work and that during his stay inside the office room, the delinquent workman entered and had his hot discussion with the Agent over stoppage of Sunday work. His evidence further shows that the delinquent workman gave a slap to the Agent and that thereafter the Office Peon and the Security Guard dragged out the delinquent workman from the office room. It has already been shown that the Agent Mr. Agarwal has not stated in his evidence that Mr. Mishra was inside the office room from before and at the time when the delinquent workman entered into the office room on the date of the occurrence. It has also been shown that neither the Office Peon nor the Security Guard has stated in his evidence that they saw Mr. Mishra inside the office room of the Agent when they entered into the office room after hearing the golmal. It has also been shown that the copy of the F.I.R. and the original complaint to the General Manager by the Agent himself have not been produced. Such being the position, the evidence of Mr. Mishra who has been examined long after the examination of the Agent Mr. Agarwal cannot be relied on.

14. Mr. Azad, the General Secretary of the Union has submitted that Mr. Mishra has come to oblige the employer to give his evidence as eye-witness, although he was not at all an eye-witness to the incident. In the facts and circumstances of the case as mentioned above, I cannot brush aside such submission of Mr. Azad.

15. Next comes the evidence of Hiralal Chakraborty, the Survey Officer of the Colliery. He is not an eye witness of the incident. He came to Agent's office room after the incident on hearing some holla-golla. His evidence shows that he heard from the Office Peon, Seodeep Singh that the delinquent workman had slapped the Agent Mr. Agarwal. It may be mentioned here that Seodeep Singh has not stated in his evidence that he told Hiralal Chakraborty about the slap alleged to have been given by the delinquent workman upon the Agent Mr. Agarwal. So the evidence of Mr. Chakraborty also does not stand to scrutiny. Mr. Chakraborty has further stated in his evidence that after coming to the office room of the Agent he found there some officers including Mr. Mishra. This evidence does not however prove that Mr. Mishra was present in the office room of the Agent at the time of the alleged assault upon Mr. Agarwal by the delinquent workman.

16. From the above mentioned discussion, it appears that there is no other reliable corroborative evidence except the evidence of Mr. Agarwal to establish the fact that Mr. Agarwal was given a slap by the delinquent workman on the date of occurrence. As regards the alleged scuffle between the delinquent workman and the Agent Mr. Agarwal, the employer has not given any evidence through their witnesses. Now the question is whether it will be safer to come to the conclusion

on the basis of the uncorroborated testimony of Mr. Agarwal that the delinquent workman gave him a slap on the date of occurrence, specially when the workman himself has denied such assault from the very beginning. The delinquent workman denied the alleged assault first in his reply to the charge and then in his statement and evidence before the Enquiry Officer. The delinquent workman has no doubt admitted in his statement before the Enquiry Officer that during his discussion with the Agent on the stoppage of his Sunday work, he might have shouted. The evidence on the side of the employer has also established that the delinquent workman was shouting while talking with the Agent in the office room. The delinquent workman has however denied that he gave any slap on the Agent. It may be mentioned here that the employer has not adduced any evidence to show the past misconduct of the delinquent workman with any superior officer including the Agent. In the circumstances, I feel not inclined to rely on the uncorroborated testimony of Mr. Agarwal as to the alleged assault of slap upon him. Accordingly I find that the employer could not establish that the delinquent workman gave a slap and thereby assaulted the Agent Mr. Agarwal on the date of occurrence. The evidence has however established that his behaviour while having a discussion with the Agent was not decent and that he was shouting with the Agent.

17. In view of what has been stated above, I find that the Enquiry Officer was not justified on the materials in the record to find the delinquent workman guilty of the charge of assault upon the Agent but I find that he was justified in finding the delinquent workman guilty of the charge of indecent behaviour with the Agent.

18. Next comes the question whether the employer has been justified in dismissing the delinquent workman for his misconduct in the form of indecent behaviour with the Agent. The Model Standing Order which admittedly governs the establishment of the employer no doubt enjoins that for the misconduct in the form of indecent behaviour while on duty at the place of work, warrants the dismissal of the concerned workman. In the instant case it appears that the indecent behaviour of the concerned workman took the shape of his shouting before the Agent while pressing his demand. Such being the position, the maximum punishment of dismissal from service appears to be excessive and unjustified in the instant case. There is other mode of punishment in the form of suspension, fine and stopping of increment etc. in the Model Standing Order. In the facts and circumstances of the present case, I hold that the stoppage of increments of the delinquent workman for 7 years, i.e. from 1983 to 1989 will meet the ends of justice.

19. In the result the order of dismissal upon the concerned workman is set aside but his annual increment for seven years from 1983 to 1989 is stopped by way of punishment. Subject to this punishment, the workman concerned be reinstated to the service with all consequential relief.

This is my Award.

Dated, Calcutta,

The 20th December, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(37)/84-D.IV.B/IR(C-III)]

नई दिल्ली, 5 जनवरी, 1990

का. अ. 208 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुच्छेद में, केन्द्रीय सरकार व हेसर्स वेस्टर्न कोलफील्ड्स लिम. के चिरमिरी गेरिया के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अखंड में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-90 प्राप्त हुआ था।

New Delhi, the 5th January, 1990

APPEARANCES :

For Union—Shri S. K. Rao, Advocate.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Surguja (M.P.)

AWARD

Dated : December 19th, 1989

This is a reference made by the Central Government, Ministry of Labour, vide Notification No. L-22011(2)/85-D.V. dated 30th January 1986, for adjudication of the following dispute :—

“Whether the action of the management of Chirimiri Area of Western Coalfields Limited, P.O. Chirimiri Colliery, Dist. Surguja (M.P.) in not giving the opportunity to the workers (listed in the Annexure to the Schedule), Subsequent to their termination from services is justified ? If not, to what relief are these workers entitled ?”

The list of workers was subsequently sent by the Ministry of Labour vide letter No. L-22011/2/85-D.V dated 14th November, 1986 which is as under :—

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(27)/1986

PARTIES :

Employers in relation to the management of Western Coalfields Limited, P.O. Chirimiri Colliery, District Surguja (M.P.) and their workmen, listed in the Annexure to the Schedule—45 workmen, represented through the Azad Koyla Shramik Sabha, Chirimiri Area Branch, P.O. Damua Hili Colliery, District Surguja (M.P.).

LIST OF WORKERS

Serial No.	Name	Father's name
1.	Sri Sasun Ansari	Sri Unnis Miyan
2.	„ Manharanlal	„ Daras Ram
3.	„ Mahettaruq	„ Muritram
4.	„ Jagarnath	„ Pitambar
5.	„ Jamaluddin	„ Md. Miyan
6.	„ Mansoor	„ Fitaph
7.	„ Bajir	„ Idrish
8.	„ Badriprasad	„ Lallaram
9.	„ Lalitkumar	„ Nanku Pd.
10.	„ Baratu	„ Gulab
11.	„ Umashankar	„ Dukhiram
12.	„ Lala	„ Kholbahara
13.	„ Rajkumar	„ Bhojram
14.	„ Prahlad	„ Pancharam
15.	„ Mahettaru	„ Kholbahara
16.	„ Dharanla	„ Marhu
17.	„ Ashok Kumar Singh	„ Kapildev
18.	„ Radheshyam	„ Panchram
19.	„ Lakhan Pd.	„ Budhram
20.	„ Narayan	„ Tulsiram
21.	„ Bhagchand	„ Mahatar
22.	„ Ishwarlal	„ Budhram
23.	„ Mahadeo	„ Madu
24.	„ Bharat	„ Khiko
25.	„ Rambilash	„ Bagar
26.	„ Sonsei	„ Govind
27.	„ Achha	„ Bharat

1	2	3
28. „	Tikaram	„ Panchram
29. „	Geetaram	„ Baldeo
30. „	Bishnath	„ Bahuram
31. „	Ramnath	„ Nanku
32. „	Anujram	„ Sundarsai
33. „	Teras	„ Jogeshwar
34. „	Kaviraj	„ Mangal
35. „	Bhagrathi	„ Gopi
36. „	Bijay	„ Choudhary
37. „	Punia	„ Ananda
38. „	Prakash	„ Babaji
39. „	Agadhu	„ Kanu
40. „	Dhannu	„ Narsingh
41. „	Anand	„ Mukumsai
42. „	Yudhisthir	„ Govind
43. „	Vishnu Pd.	„ Ramdhin
44. „	Navadhan	„ Bhawani
45. „	Pankaj	„ Dinbandhu

2. The Award was passed in this case by my predecessor on 27-6-1988. A writ was filed against the said award in the High Court of Madhya Pradesh which was registered as M.P. No. 3958/88 and vide order dated 2-8-1989 the award was set aside and the case was remitted to this Tribunal for deciding the reference and passing a fresh order in accordance with law with advertence to the observations made in the order. It was observed by the Hon'ble High Court that the reference proceeded on the assumption that the persons mentioned in the Schedule had been employed as workers by the Respondent (Management) and the only question which was to be decided by the Tribunal was whether after the termination of their service they were entitled to be re-employed under Sec. 2-H of the I.D. Act. (It should be Sec. 25-H instead Sec. 2-H).

3. The case of the workmen union is that Azad Koyla Shramik Sabha is registered union of the workers working in Chirimiri Area of Western Coalfields Limited (Registration number of Union is 449). According to them, 45 workers as annexed with the Schedule were employed by the management of W.C. Ltd. Chirimiri Area. They were employed in the capacity of General Mazdoor in Category I of N.C.W.A. I. They were initially taken in the employment by the management of North Chirimiri Colliery in the year 1975. They were deployed in so many places like fire area sidings as trammers as belt mazdoor, as bucket man telephone line repairers. They continued to work with the management of North Chirimiri Colliery under the supervision and instructions of the Mines Manager. They were deployed in loading and unloading job also. Their services were, however, automatically terminated in December, 1980 without giving any departmental enquiry against them after continuous working of five years. Management did not even comply with the provisions of Sec. 25F, 25G and 25H of the I.D. Act while terminating/retranching the workmen. They have completed more than 240 days service. They have attained the status of permanent employees of the colliery and therefore termination without following the procedure laid down in the Industrial Disputes Act is illegal, void and a clear case of unfair labour practice.

4. Though the workers were employed on various jobs but were paid only Rs. 4.50 per day. Although the management maintained registers of workers and has taken daily attendance but the payment was made through the cash department of the colliery. Therefore, they are entitled to

difference of wages from 1975 to 1980. Their service conditions are governed by the N.C.W.A. I, II and III and therefore they are entitled to the difference of wages accordingly.

5. Management having all the attendance registers and payment registers with them from 1975 to 1980 did not produce them before the Assistant Labour Commissioner and victimised the workers. They have been terminated from service without any misconduct or any other reason and therefore it amounts to retrenchment as defined under Sec. 2(oo) of the I.D. Act. During 1980 to 1985 several other workers were recruited in the colliery but these workers have not been given an opportunity to work in the colliery. Workers who have come from different states were also recruited but these local people have not been recruited by the management after their termination. The principle that the persons who were retrenched have first right to be recruited in the colliery has been violated and the management has not followed the procedure and principle of last come first go. The workers are approaching the management since 1980 but to no effect. Their termination being illegal and void and they having continuous service of more than five years they should be deemed to be permanent and they be reinstated with all other benefits and back wages from 1975 to 1980. That apart, the management has reinstated workers who have completed only 4 or 5 days services. Thus the workmen are entitled to the above relief.

6. In short the management has denied the entire claim of the workmen/union. According to them, the management had never employed them. There were no employee-employer relationship and therefore the reference could not have been made to the Tribunal. The Azad Koyla Shramik Sabha has no legal existence and no membership. They are not entitled to take up the cases of these workers. The non-members therefore cannot raise industrial dispute. The workers being not employees could not have been the member of the union. Therefore, there is no industrial dispute in the eye of law and no reference could have been made under Sec. 10 of the I.D. Act.

7. Though the reference is in regard to the termination of services no details of the alleged termination have been given. The Central Government has acted without application of mind and has mechanically made the reference. There is no material before the Central Government to come to the con-

clusion that the individuals were employed or their services were terminated. The Central Government ignored material facts and the reference has been made on the basis of totally irrelevant and extraneous matter. Annexure to the reference does not indicate the alleged period of working, post on which the alleged individual worked and in the absence of these particulars it is not possible for the management to make any specific averment. The names of the individuals do not appear in the register of the management and as such it is clear that none of the 45 individuals worked with the management. There was no termination of service as alleged. Names of the applicants are not found in the Form B Register or any attendance register. Vacancies are notified to the Employment Exchange and persons sponsored by the Employment Exchange are interviewed or tested according to category and employment is given to the selected persons subject to the availability of vacancies. None of these individuals have got their names sponsored through the Employment Exchange to enable the management to consider their case. No vacancies are existing in the Chirimiri Area and the management is not in a position to give employment to these fresh candidates. The reference is accordingly bad in law and in the alternative it has been prayed that it should be held that there was no employment or termination of workmen and they are not entitled to any relief whatsoever.

8. In view of the observations made by the Hon'ble High Court, little scope is left to this Tribunal for discussing the other points in detail and this Tribunal has just to give a finding as to provisions of Sec. 25-H (wrongly mentioned as Sec. 2-H) of the I.D. Act have been complied with or not. Nevertheless, it would be expedient that the entire situation is explored keeping in mind the directions given by the Hon'ble High Court.

9. It is true that in adjudicating upon an "industrial dispute", the Tribunal must look at the order of reference itself as it is only the subject matter of reference with which the Tribunal can deal with. Where in an order referring an "industrial dispute" to a Tribunal under Sec. 10(1) or in a subsequent order, the "appropriate Government" has specified the points of dispute for adjudication, the Tribunal shall confine the adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of dispute referred to it, but must confine its attention to the points specifically mentioned and anything which is incidental thereto. Thus the jurisdiction of the Tribunal is limited to matters referred to it by the Government, it would have no right to travel outside the reference and proceed to adjudicate the matters not referred to it. (See O. P. Malhotra—The Law of Industrial Disputes, Fourth Edition, Volume I, page 683).

10. Thus as has been rightly pointed out by the Hon'ble High Court, this Court has limited jurisdiction and it is not supposed to go behind the order of reference as to on what basis the Government had presumed that workers concerned were in their employment and as such were not given an opportunity subsequent to their termination from service. Reference as pointed out by the Hon'ble High Court presumes that the workers concerned were employed and their services were terminated. The factum of employment has been questioned in the written statement filed by the management. The management has further questioned the legality of the reference.

11. That apart, management has also pointed out the vagueness in the order of reference in as much as it does not disclose as to what was the category of the workmen, and when their services were terminated apart from other lacunas pointed out in the written statement filed by the management. In this regard, I have to say that the Government may not always specify the point upon which the reference is made; it may make a reference generally. In most cases, the order of reference is so cryptic that it is impossible to pull out therefrom the various points about which the parties were at variance, leading to the trouble. In such cases, of course the Tribunal can ascertain the points of dispute from the pleadings of the parties to find out the exact nature of dispute and decide them. But the Tribunal has to confine itself to the pleadings and the issues arising therefrom and

it is not open to it to fly off at a tangent disregarding the pleadings and reach any conclusion that it thinks just and proper. Even the pleadings of the parties can be looked into only to clarify the points of dispute set out in the order of reference; but it cannot be allowed to alter the terms of reference or the basis of reference. In other words, the parties cannot be allowed to challenge the very basis of the dispute set out in the order of reference. In *Delhi Cloth & General Mills Co. Ltd. Vs. Their Workmen* (1967-1-LLJ 423) (427) SC, per Mitter, J and in other cases the Hon'ble Supreme Court pointed out that the Tribunal can look to the pleadings of the parties to find out the exact nature of the dispute, but it cannot allow the parties to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under Sec. 10(4) of the Act it is not competent to the Tribunal to entertain such a question.

12. Madras, Delhi, Mysore, Madhya Pradesh and Bombay High Courts have also held that the Tribunal is not at liberty to enlarge the scope of the reference. Even if a reference is made on an incorrect assumption, it is not open to the Tribunal while so holding to enlarge by its own choice, the scope of the reference and widen the issues for decision and the field of enquiry including evidence. (See O. P. Malhotra—The Law of Industrial Disputes, Fourth Edition, Volume I, page 684).

13. But at the same time, in the case of *India Tourism Development Corporation, New Delhi Versus Delhi Administration* (1982) Lab. I.C. 1309 (1328) Delhi (FB) per Chadha, J the Court quashed the order of reference because it proceeded on the assumption that there was, in fact, lock-out in the existence while the real dispute between the management and the workmen was whether there was lock-out or closure in the establishment. (See Malhotra's book referred to above at page 684, citation (p)).

14. The words "incidental thereto" in Sec. 10(4) do not have the same meaning as the words "appearing to be connected with or relevant to the dispute" occurring in clause (b), (c) and (d) of Sec. 10(1) of the Act. The matters governed by the latter expression must be specifically referred for adjudication, while the matters covered by former expression need not be specifically referred as they can be adjudicated upon as a part of the main dispute. For instance, on an industrial dispute being referred to it, the Tribunal has jurisdiction to determine whether on the facts placed before it, an "industrial dispute" within the meaning of S. 2(k) has really arisen, or the concerned persons are "workmen" as defined in Sec. 2(s) or a particular undertaking is an "industry" within the meaning of Sec. 2(j) or such industry is a live industry or a closed industry. Such questions can be validly examined and adjudicated upon by the Tribunal as matters incidental to the points of dispute specified in the order of reference. These matters have not only to be determined as matters incidental to the dispute but have necessarily to be determined as collateral or jurisdictional issues, as the jurisdiction of the Tribunal depends upon such determination, or adjudication. (See Malhotra's Book cited above at page 686).

15. In the light of the above legal proposition though fortified by the order of the High Court I should examine the evidence on record and while appreciating the evidence and the practice adopted by the management I have no hesitation to express my feelings towards the appropriate government while making the reference so vague on account of the non-cooperation of the management and giving out false information as can be ascertained from the following discussions of the evidence on record of this Tribunal.

16. I must first take up the statement of M.W. 1, Shri Y. N. Srivastava, Deputy Chief Mining Engineer, Katkora Colliery of S.E.C. Limited, District Surguja. When the attention of this witness was drawn in his cross-examination towards the application dated 15-9-1987 filed by the Union for production of the following documents he specifically admitted that the documents referred to in the application should normally be at the office where the workers were working:—

(a) Attendance register from 1975 to 1980 to all the 45 workers involved in the dispute.

(b) Vouchers by which payment is made to the workers i.e. from 1975 to 1981.

(c) Cash book showing the payments made to the workers from 1975 to 1980.

Only from the statement of the above witness it is abundantly clear that these documents must be with the management and this fact is clear from the reply of the management dated 26-10-87 para 2, according to which these documents cannot be produced firstly they are extremely bulky and secondly they have no relevancy to the case. Thus it is amply established beyond doubt that these documents were with the management. The documents themselves reveal that they were the most material documents to show that the workmen under reference were working with the management or not, but the management did not produce the documents to falsify the averment made by the Union. Referring to the proceedings of this Court dated 15-9-1987—The Court directed the management for producing the documents or give reply to the application on 15-10-87. Then again on 15-10-87 the Court directed the management to produce the documents or reply on affidavit as to why the documents cannot be produced. On 26-10-1987 the management filed reply to the application but no affidavit as such was filed as to why documents cannot be produced. Obviously, the management was having foul play at the Court and was concealing the documents by not producing the same, for obvious reasons. I can therefore well understand the difficulty of the government while making this vague reference as pointed out above and not only in view of the above discussions but also for the obvious reasons, the reference cannot be rejected.

17. It is further to point out that when attention of M.W. 1, Shri Y. N. Srivastava, was drawn towards the application of workmen dated 15-9-1987 he changed his version and said that the connected record has been stolen. He, however, admitted that the contents of the reply to the application were true. Then again he changed his version and said that part of documents are stolen. Again changing his version he stated that the reasons for not filing the documents before this Court is not known to him. He, however, added that they may not be relevant.

18. Thus every effort was made by the management that the documents showing that the workmen concerned were in the employment of the management are not produced before this Court and they avoided to produce them on one false ground or the other. I have no hesitation to express that on this count alone the government should deal with the management strictly and suitable action must be taken against the defaulters who played with the lives of the people taking false pleas shamelessly. I draw adverse inference against the management for non-production of material documents, telling them to be bulky, irrelevant or having been stolen.

19. The fact that these workmen were working with the management can be gathered from the documents Ex. W/1 to Ex. W/25. How these copies were obtained by the workmen is a different matter but the fact remains that M.W. 1, Shri Y. N. Srivastava, admitted in his cross-examination the authenticity of Ex. W/1 to Ex. W/3 without any reservation and identified the signature of Shri Sachdeva, the then Manager, on these documents. He further admitted that these workers were working in their colliery though he changed his version and said that he cannot say whether they are working because their names never appeared in his scrutiny.

20. Cross-examination of this witness would further reveal that he could not specifically deny the genuineness of the documents Ex. W/1 to Ex. W/25 and stated that the original of these documents should be in the office of the establishment. But again he changed his version and said that he cannot say that the originals of Ex. W/1 to Ex. W/25 are in the office because any of them may have been stolen. This witness was cross-examined on the point as to why the matter was not reported about the fact that these documents were stolen. He avoided the answer to question stating that there was no theft during his time. But the management has not produced the person in whose time the alleged theft was made. The expression from the reading of the testimony of this witness appears to be is that this witness assumes that these documents have been stolen or might have been stolen.

21. This witness admits the signature of the Manager on the documents Ex. W/3, Ex. W/12 and Ex. W/15. Names of the workmen found place from Ex. W/1 to Ex. W/25 are as follows:—

1. Samin Ansari—Ex. W/9.
2. Manharanlal—Ex. W/9.
3. Mahettaruq—Ex. W/9.
4. Jagannath—Ex. W/9.
5. Jamaleddeen—Ex. W/9.
6. Mansoor—Ex. W/8.
7. Beji—Ex. W/9.
8. Badri Pd.—Ex. W/9.
9. Lalit Kumar—Ex. W/8.
10. Barau—Ex. W/9.
11. Umashankar—Ex. W/9.
12. Lala—Ex. W/9.
13. Rajkumar—Ex. W/9.
14. Prahlad—Ex. W/9.
15. Mahettaru—Ex. W/8.
16. Dharamila—Ex. W/13.
17. Ashok Kumar Singh—Ex. W/12.
18. Radheysyam—Ex. W/12.
19. Lakhan Prasad Ex. W/12.
20. Narayan—Ex. W/12.
21. Bhagchand—Ex. W/12.
22. Ishwarlal—Ex. W/12.
23. Mahadeo—Ex. W/12.
24. Bharat—Ex. W/12.
25. Rambilash—Ex. W/12.
26. Sonsai—Ex. Sonsai—Ex. W/12.
27. Achha—Ex. W/12.
28. Tikaram—Ex. W/12.
29. Geetram—Ex. W/12.
30. Bishnath—Ex. W/12.
31. Ramnath—Ex. W/12.
32. Anjuram—Ex. W/12.
33. Teras—Ex. W/12.
34. Kaviraj—Ex. W/12.
35. Bhagirathi—Ex. W/3.
36. Bijay—Ex. W/8.
37. Punia—Ex. W/3.
38. Prakash—Ex. W/9.
39. Agadhu—Ex. W/3.
40. Dhannu—Ex. W/3.
41. Anand—Ex. W/11.
42. Yudhisthir—Ex. W/9.
43. Vishnu Pd.—Ex. W/10.
44. Navdhan—Ex. W/3.
45. Pankaj—Ex. W/3.

22. It is nobody's case that the names of the workmen found in these documents are not those who are the workmen in this case. It has to be further added that the genuineness of these documents have been proved by W.W. 1 Jagannath and W.W. 2 Bhagirath. They have further stated that despite various representations vide Ex. W/26 to Ex. W/35 the management did not respond to them and recruited other fresh candidates in their place. This fact has been admitted by M.W. 1, Shri Y. N. Srivastava. He says that during his period 1981-82 near about 100 persons were recruited.

23. Management has gone on to challenge the existence of the Union though nothing has been said in the arguments in this regard and the High Court has also not taken any notice of this point raised by the management in its written statement. Obviously, the appropriate government had referred the matter and the Union was shown as party to it. The testimony of W.W. 1 Jagannath and W.W. 2 Bhagirath further disclose that this Union is not only working but these

workmen are members of the said union. The Union very much represented the workmen. I accordingly record my findings as follows:—

- (i) The present workmen were in the employment of the management.
- (ii) Their services were terminated in the year about December, 1980.
- (iii) Some over hundred workers were employed by the management in the year 1981-82 in violation of the provisions of Section 25-H of the I. D. Act.
- (iv) The reference has rightly pre-supposed that the present workmen were in the employment of the management & their services have been terminated.
- (v) The reference is not bad in law.
- (vi) The Union has rightfully represented the workmen concerned.

23. The case of the workmen is that they worked since the year 1975 in the capacity of general mazdoor in Category I of N.C.W.I. I and their services were terminated in December, 1980. There is no specific denial of this fact. According to W.W. 1 Jagannath and W.W. 2 Bhagirath these workmen worked from the year 1976 to 1980. There is discrepancy as to whether they worked from 1975 as stated by them or from 1976 as deposed by them. But this inconsistency does not materially effect the case.

24. From the above evidence it is also established that the services of these workmen were terminated in the year 1980 without assigning any reason whatsoever. Thus not only the provisions of Sec. 25-F and 25-G have been violated it is nobody's case that they were complied with) but also the provisions of Sec. 25-H of the I. D. Act have been violated because after the retrenchment of these workmen some 100 workmen were employed in the year 1981-82 as deposed by M.W. 1, Shri Y. N. Srivastava. Hon'ble High Court has called for answer on the point of violation of provisions of Sec. 25-H. The reference also requires the answer as to whether the action of the management in not giving an opportunity to the workers subsequent to their termination from services is justified.

25. It is true that this Court is not to travel beyond the scope of the order of reference, but the reference itself being vague as pointed out above, and this Tribunal/Court has to grant relief without leaving the workmen to a vague award, specific relief has to be granted to them. I have, therefore, explored into the pleadings & evidence to grant appropriate relief in the particular circumstances of the case.

26. It is amply established from the pleadings and evidence on record, that these workmen had completed one year continuous service as required under law to invoke the provisions of Sec. 25-F of the I.D. Act. Obviously, their services were terminated for no reason whatsoever. It is nobody's case that procedure of Sec. 25-G of the I.D. Act was followed while terminating the services of these workmen or they were the last persons to be employed in that category. It being a clear case of retrenchment as defined under Sec. 2(oo) of the I.D. Act and the retrenchment not being under the exceptions of the said provisions, it is void ab initio for want of the compliance of the provisions of Sec. 25-F of the I.D. Act. I need not repeat that it is nobody's case that provisions of Sec. 25-F or 25-G have been followed. The termination of the services of these workmen who were employed as general mazdoor, Cat. I, in the year 1980 is, therefore, liable to be set aside as being void ab initio. I must express at this juncture that I have to give these further findings which are obviously not only ancillary to the reference, but they have to be given in order to grant adequate relief to the workmen as desired in reference without leaving the fate of the workmen to vague answer to a vague reference.

27. The reference is, therefore, answered as follows:

1. That the action of the management of Chirimiri Area of Western Coalfields Limited P.O. Chirimiri Colliery, District Surguja (M.P.) in not giving an opportunity to the workers (listed in the Annexure to the Schedule) subsequent to their termination from services is not justified.
2. They are entitled to reinstatement.
3. They were serving as General Mazdoor Category I and their services having been terminated in the year December 1980 and which is void ab initio, they shall be deemed to be in continuous service, with full back wages and all consequential relief.

While passing the award, I must express that suitable action be taken against the management for their misconduct & defaulting officers be punished who have put the workmen out of employment to fill up their own men and mislead the Government and the Court by withholding the facts on false pretences.

4. Management shall further pay Rs. 5000/- towards costs of this litigation to the Union.

Awarded in terms of the answer to the reference.

V. N. SHUKLA, Presiding Officer
[No. L-22011/2/85-D.IV/IR(C.II)]

नई दिल्ली, 8 जनवरी, 1990

का. अ. 209 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार मैसर्स ईस्टर्न कोलफील्ड्स लि. की चोरा कोलियरी के प्रबंधन से सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसंसोल के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-90 को प्राप्त हुआ था।

New Delhi, the 8th January, 1990

S.O. 209.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chora Colliery of M/s Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 4-1-90.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

REFERENCE NO. 46/88

PARTIES :

Employers in relation to the management of Chora Colliery of M/s. Eastern Coalfields Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers—Sri P.K. Das, Advocate

For the Workman—Sri Manoj Mukherjee, Advocate.

INDUSTRY : Coal.

STATE:—West Bengal.

Dated, the 28th December, 1989.

AWARD

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-24012(14)/88-D.IV(B) dated the 13th June, 1988.

SCHEDULE

"Whether the action of the Management of Chora Open Cast Project of M/s. E.C. Ltd., P.O. Bahula, Distt. Burdwan in denying pay protection to S/Sri Sripat Harijan and Karmony Pasi, Trammers, is justified? If not, to what relief are the workmen concerned entitled?"

2. To-day (28-12-89) Sri Manoj Mukherjee the learned Advocate for the workmen has filed a petition stating that he has no instruction to proceed with the case. He has prayed for passing appropriate order. Sri P. K. Das the learned Advocate for the management is also present.

3. As the learned Lawyer for the union has no instruction from his clients to proceed with the case, it must be presumed that no dispute exists between the parties. As such I have no other alternative but to pass a 'no dispute' award. Hence a 'no dispute award' is passed.

This is my award.

N. K. SAHA, Presiding Officer.

[No. L-24012(14)/88-D.IV.B/IR(C.II)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 2 जनवरी, 1990

का. आ. 210 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, जो द्वारा एम उत्तर रेलवे, लखनऊ के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-12-89 को प्राप्त हुआ था।

New Delhi, the 2nd January, 1990

S.O. :—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D.R.M., Northern Railway, Lucknow and their workmen, which was received by the Central Government on 28-12-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVT. INDUST. TRIBUNAL CUM LABOUR
COURT, PANDU NAGAR, DEOKI PALACE RD.
KANPUR

I.D. No. 181 of 1988

In the matter of dispute between :

The Zonal Working President

U. R. K. U. 96/196 Roshan Bajaj Lane Ganeshganj
Lucknow.

AND

The Divisional Railway Manager, Northern Rly., Hazratganj Lucknow.

94 GI/90—4

1. The Central Government, Ministry of Labour, vide its notification No. L-41011/36/86-D.II(B) dated 14-12-1988, has referred the following dispute for adjudication to this Tribunal :

Whether the Divisional Railway Manager, Northern Railway Lucknow was justified in terminating the services of Shri Anup Kumar and 9 others mentioned below w.e.f. 16-11-84? If not what relief the workmen concerned are entitled to?

Sl. No)	Name of the workman with percentage	Date of casual appointment Sub. L.R. Porters.
1	2	3
1.	Sh. Anup Kumar, s/o, Sh. B. M. Saxena	16-4-78/31-3-83
2.	" Rakesh Kumar Pandey, s/o Sunderlal	15-3-77/31-3-83
3.	" Bhagwanibux s/o, Sant Ram	05-3-77/31-3-83
4.	" Roshan Lal s/o, Sh. Heera Lal	15-1-78/31-3-83
5.	" Jin Lal s/o, Sh. Raghu Raj	15-7-77/31-3-83
6.	" Sant Prasad, s/o Lala	16-6-80/31-3-83
7.	" Ram Jas s/o, Ram Asra	15-10-80/31-3-83
8.	" Jag Jiwan s/o, Ram Prasad	15-1-75/31-3-83
9.	" Gauri Shankar, s/o Badri Prasad	15-9-76/31-3-83
10.	" Ashok Kumar s/o, Ram Niwas Srivastava	15-9-77/31-3-83

2. The instant case was fixed for cross examination of the workman on 29-11-1989. On 29-11-89, Shri D. P. Awasthi who has been the authorised representative of the workmen submitted before the Tribunal that despite effort the workman is not coming and it seems that he had lost interest in the case. He further stated that the present case be decided as if there is no evidence from the side of the Union.

3. Thus keeping in view the submissions made before the Tribunal by Sh. D. P. Awasthi, A.R. for the Union, a no claim award is given in the case.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-41011/36/86-D.II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 4 जनवरी, 1990

का. आ. 211 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, हयिदन एयर-लाइन्स, हैदराबाद के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-1990 को प्राप्त हुआ था।

New Delhi, the 4th January, 1990

S.O. 211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Airlines, Hyderabad and their workmen, which was received by the Central Government on 3-1-1990.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

Dated : 18th December, 1989.

Industrial Dispute No. 25 of 1987.

BETWEEN

The Workmen of Indian Airlines, Hyderabad.

AND

The Management of Indian Airlines, Hyderabad.

APPEARANCES

Sarvasri G. Manohar and S. R. Mahajir, Advocates for
the workman.Shi K. Srinivasa Murthy and Miss G. Sudha, Advocates
for the Management.

AWARD

The Government of India, Ministry of Labour, by its order No. L-11012/12/86-D.II(B), dated 22-5-1987 referred the following dispute under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947, between the employers in relation to the management of Indian Airlines, Hyderabad and their workman to this Tribunal for adjudication :

"Whether the action of the Management of Indian Airlines, Hyderabad in dismissing the services of Sri Erodula Hari Rao, Driver vide Order No. HYD : DIS : 1283 dated 20-2-85/13-3-85 is legal & justified ? If not, to what relief the concerned workmen are entitled to and from what date ?"

This reference was registered as Industrial Dispute No. 25 of 1987 and notices were issued to the parties.

2. The claim statement filed in this Industrial Dispute briefly runs as follows :—The workman E. Hari Rao was former Airforce employee. He took up services in Indian Airlines Corporation after voluntary retirement from Indian Airforce. He took up services as Driver in M. T. Station in March, 1983. He was confirmed in service on 30-9-1983. There was some bickerings between him and some of his superior officers because he was not abling them by purchasing goods at concessional rates in Military Canteen and supplying to them. One Somayajulu (Transport Superintendent) had grudge against him because he wanted the workman to present him articles purchased in Military Canteen as gifts. Superiors were out to harass the workman. On 25-4-1984 the workman went to P. R. K. Murthy, Senior Transport Assistant and requested whether he could give a lift to Airport as it is a routine practice. Instead of giving the lift Mr. Murthy started making provocative statement and started abusing in a very provocative tone. Then there was exchange of words as the workman objected to such behaviour. When Senior Transport Officer arrived on the spot, the workman, complained to him about the behaviour of Murthy. Murthy was chided by the Senior Transport Officer and the workman was asked to keep quite and then the workman was provided with a car to go to the Airport. Murthy gave a written complaint to the Deputy Controller Ground Support. Basing upon the complaint the workman was suspended on 27-4-1984. The workman gave an explanation. The explanation was treated as not satisfactory and a domestic enquiry was conducted. In the enquiry, the workman was assisted by a friend who belonged to the Management cadre. The Officers were bent upon somehow or other getting a

finding that the workman is guilty. The enquiry was closed. Thereafter the workman gave a written summary on 25-8-1984. However the Enquiry Officer wrote a letter on 28-8-1984 stating that he is reopening the enquiry. The protests of the workman were ignored and the Enquiry was reopened and fresh evidence was allowed to be let in by the management to fill up lacunae on the case of the management. The Enquiry Officer accepted the evidence which is inadmissible and untrust-worthy. Documents produced after reopening of the enquiry, clearly show tempering. Ignoring all these defects the Enquiry Officer found the workman guilty.

3. Then the Management gave a notice proposing the punishment of dismissal. While giving this show cause notice, the management took into account the earlier incident his breaking of a taxi-way light as 26-5-1983. A detailed reply was given showing the flagrant violations of the principles of natural justice, by the enquiry officer in the conducting of enquiry. By letter dated 20-2-1985 and 13-3-1985, the Deputy Controller, Ground Support dismissed the workman. The Enquiry Officer's report clearly shows that the enquiry officer glossed over several defects in the evidence and accepted material which is not at all admissible in evidence. In the enquiry of this type, if there is any benefit of doubt it ought to have been given to the accused. Peculiarly the Enquiry Officer gave benefit of doubt to the Management. The enquiry is totally vitiated and it violates the principles of natural justice. The findings recorded by Enquiry Officer are perverse and not based on material on record.

4. The workman appealed against the order of dismissal. For several months, no action was taken. He sent several reminders. Finally he addressed letter to the Hon'ble Prime Minister. On 3-1-1986, after a lapse of eight months the Regional Director informed the worker that the punishment is justified but in view of the assurance of good behaviour, he is being reappointed as a Driver afresh in the M. T. Section at Hyderabad. Before he could give response to this letter he received another letter from the Manager, Personnel Services informing him that he was to be posted at Madras. The way in which the Management acted, clearly indicates that they were out to harass the workman and they are anxious to punish him on some pretext or the other. The reappointment afresh without giving him continuity of service and then suddenly posting him to Madras are indication of vindictive behaviour of the Management. Hence it is prayed that the order of dismissal may be set-aside and that the Management may be directed to reinstate the workman in Indian Airlines at Hyderabad, with full back wages and benefits and continuity of service.

5. The counter filed by the Management runs thus.—The various allegations in the claim statement are denied. The Petitioner is not to strict proof of the same. The Petitioner was appointed as driver on 31-3-1983 and he was confirmed as Driver on 30-9-1983. In service he always acted contrary to the rules of discipline and misbehaved with the officials and also made certain derogatory remarks against the superiors and used abusive language. Based upon the complaint given by the concerned officials, a charge sheet was issued on 29-1-1985 and being not satisfied with the explanation offered by him, a domestic enquiry was instituted and Sri A. A. Samuel, Assistant Manager, Personnel Service of Madras was appointed as Enquiry Officer. He conducted the enquiry giving full and fair opportunity to the Petitioner. Based on the findings of the Enquiry Officer, the Management issued order dt. 13-3-1985, dismissing the petitioner from service. In the enquiry, the delinquent was assisted by Sri Sanjeeva Rayudu, Accounts Superintendent, Bangalore. The delinquent and his friend fully participated in the enquiry and they fully cross examined the various witnesses. The enquiry was conducted observing all the principles of natural justice. The allegations that enquiry is vitiated are false. The Tribunal may be pleased to decide the validity of the domestic enquiry as a preliminary issue. If the Tribunal comes to the conclusion that the Management has not conducted the enquiry properly the Management may be permitted to prove the charge by adducing evidence.

6. The various allegation made by the worker against different officers are totally false and he is doing so only with a view to cover up his latches and to somehow indicate prejudice. Earlier three memos were issued to him for misbehaviour. Subsequently for the incident concerned, a disciplinary enquiry was instituted. The various allegations made against the witnesses and the enquiry officer are false. The enquiry was conducted in a free and fair manner, Sri A. Sanjeeva Ravindru a friend was chosen by the delinquent in the enquiry. The conclusions of the Enquiry Officer are perfectly correct and they are based on records. It is not correct to say that the Enquiry Officer was biased and with a view to harass the Petitioner, he reopened the enquiry. He has recorded reasons for reopening the enquiry. The allegation that the Management did not apply its mind to the facts of the case and dismissed him mechanically, is not correct.

7. The Respondent is not aware if the Petitioner wrote letters to the Prime Minister and others. After receipt of the appeal, the Management reconsidered his case and agreed to re-appoint him atres and the Management informed him that he will be posted at Madras. Letter dt. 3-1-1985 was issued to the Petitioner. He received it but he kept silent and then he raised conciliation proceedings and raised this dispute. His intention seems to be to get back wages illegally without doing work. The Petitioner workman is in the habit of behaving very rudely with superiors and officials and on several occasions, Pilots reported to the Management regarding his rude behaviour. The Management took a lenient view and cautioned him and advised him several times. The allegation that his being posted at Madras is an indication of vindictive attitude, is not correct. The Senior Transport Assistant with whom the petitioner came into trouble is now promoted as Transport Officer at Hyderabad and it would not be in the interest of the petitioner to work under the same officer. Hence it was proposed to post him at Madras. The allegation that the punishment is arbitrary, excessive and unreasonable is not at all correct. The petitioner is not entitled to any relief in this matter. The industrial dispute may be dismissed with exemplary costs.

8. This Tribunal took up the validity of the domestic enquiry as a preliminary issue and an order was passed on 9-7-1988 holding that the domestic enquiry is vitiated. An opportunity was also given to the Management to adduce evidence to establish their case.

9. On the preliminary issue, the Management examined Sri A. S. Samuel the Enquiry Officer as M.W1 and marked Exs. M1 to M13. Subsequently the Management examined Sri T. M. Rangachari and Sri P.R.R.K. Murthy as M. Ws. 2 and 3 and marked Exs. M19 to M23 and M9(a). As against the above evidence, the workman Sri E. Hari Rao examined himself as W.W1 besides examining one Sri Md. Habeebulla as W.W2. He also marked Exs. W1 to W5 in support of his case.

10. Thus the points for determination are as follows :—

Whether the management proved the charges against the workman and if so the action of the Management in dismissing the services of the workman Sri Hari Rao vide Order No. HYD. DIS : 1283 dated 20-2-85/13-3-85 is legal and justified ?

11. POINT 1 —Ex. M1 is the charge-sheet dated 7-5-1984 issued to the workman. The charges issued against the workman are as follows :—

- (i) That on 25th April, 1984, you approached Sri P.R.R.K. Murthy, Sr. Transport Assistant at about 1530 hours with a request to provide you a car to go to Airport. Sri Murthy expressed his inability to provide a Car. Thereupon, it is alleged, that you shouted at him, behaved rudely using filthy language, and acting in a vulgarly and indecent manner.
- (ii) Although while you were shouting at Sri Murthy, Sri T. M. Rangachari, Sr. Transport Officer advised

you not to misbehave, you continued to shout and argue with Sri Murthy.

The above acts of yours constitute misconduct within the meaning of Clause 28(8), 28(18) and 28(20), reading as under :

Clause 28.—Without prejudice to the generality of term 'misconduct' it shall be deemed to include the following acts of omission and commission :

- Cl. 28(8).—Wilful insubordination or disobedience, whether 'alone' or in combination with others of any lawful and reasonable order of his superior.
- Cl. 28(18).—Riotous, disorderly or indecent behaviour in the premises of establishment.
- Cl. 28(20).—Commission of any act subversive of discipline or of good behaviour in the premises of the establishment.

12. As already observed, the domestic enquiry is held as "vitiating" in the order dated 9-7-1988. In such a case, the position would be that this tribunal would be entitled to deal with the merits of the dispute. The above view is testified by the decisions (1) 1962-2-LJ-498 in (RITZ Theatre Vs. Its Workman), (2) 1972-2 LJ, 180 (Delhi Cloth and General Mills Company Vs. I. B. Singh).

13. Both the parties submitted written arguments which form part of the record.

14. The Management places reliance on the evidence of M. Ws. 1 to 3 to prove the charges issued to the workman. M. W1 is the Enquiry Officer. The evidence of M. W1 is referred to in the order dt. 9-5-1987 passed on the validity of the domestic enquiry. M. W2 is Sri T. M. Rangachari. He deposed that he is working as Senior Transport Officer in Indian Airlines, Hyderabad on 25-4-1984 when the incident in question had taken place, that he knows the workman E. Hari Rao who is working as Driver, that he also knows Sri P.R.R.K. Murthy (M. W3), who was working as Transport Assistant under him, that on 25-4-1984 he was on duty from 8.00 a.m. to 4.30 P.M., that on that day at 2.30 P.M. Mr. Murthy was allotting some duties to driver E. Hari Rao, that some arguments took place between them, that tone increased gradually, that he tried to interfere and pacify them, that inspite of his intervention the arguments and incident continued, that he telephonically informed the Head of the Department i.e. Deputy Controller Sri S. K. Roy. Further he stated that he remembered to have heard the words "Hell" "Balls" etc. while there was arguments, and incident between E. Hari Rao and Murthy. Further he stated that he received a written complaint (Ex. M14) from Murthy (M.W3) that he sent Ex. M14 with an endorsement (Ex. M14(a) to the Deputy Controller. Further he stated that whenever duties are allotted to Drivers, an entry is made in the log book, that Ex. M17 is the entry in the log book (Ex. M-9) with regard to vehicle No. ADU 6647, that the entries in the log book are made by the Transport Assistant who is on duty and that the entries will be based on duties allotted to the drivers. Further he stated that there is no rule that they should provide transport for a driver to take up duty, that if the distance is more, they usually provided a car, that no driver can stop going from duty just because car is not provided. Further he stated that Transport Assistant on duty maintains the movement register list Ex. M20 is the movement register maintained by the Transport Assistant, that in case the Transport Assistant is not available he makes the entries in the movement register, that the concerned Driver signs in the column provided for signature of the driver in the movement register.

15. M.W3 is Sri P. R. R. K. Murthy. He deposed that he was working as Transport Assistant in the Movement Section, Indian Air Lines, Hyderabad; that on 25-4-1984 he was on duty from 2.00 p.m. that he knows the workman E. Hari Rao who was Motor Transport Driver, that on that day i.e. 25-4-1984 Sri E. Hari Rao was in General Shift commencing from 9.40 a.m. to 5.00 p.m. that Hari Rao was allotted Freight Truck Duty by the morning shift Supervisor, that at 2.30 p.m. E. Hari Rao came to him, that E. Hari

Rao again came to him at 3.30 P.M. and asked for a car to go to duty which is less than 1/2k.M. from transport section, that he picked up a quarrel with him when he refused to give a car on the ground that the cars are busy with crew duties, that he used filthy language against him in the office in front of anybody, that he also stated you (M. W3) are not a supervisor except "Balls", that he (workman) also stating that he discharged more responsibilities than him while working in Military, M.W3 further deposed that the Senior Transport Officer (M.W2) was present that time and that Senior Transport Officer intervened and tried to pacify E. Hari Rao and that E. Hari Rao did not listen to Senior Transport Officer and started shouting at him. He further deposed that E. Hari Rao threatened him with dire consequence, that he also stated he will not care for the Department or Supervisors. M.W3 further deposed that Sri Hari Rao advised him (M.W3) to look at his (Hari Rao) private parts by opening his pant buttons. Further he deposed that Senior Transport Officer (M.W2) informed the occurrences on phone to the Deputy Controller. Further he stated that he gave a complaint in writing (Ex. M14). He further deposed that there were 2 or 3 instances reported by Supervisors earlier to Senior Transport Officer against E. Hari Rao. He also spoke to the filthy language used by Hari Rao as follows :—"You are balls Supervisor. I have discharged those responsibilities than you. You are less than a driver, Go to Hell. I will not care for this management or Supervisors".

16. As seen from the above, Sri P. R. R. K. Murthy, (M. W3) deposed that on 25-4-1984 he was on duty from 2.00 P.M. to 9.30 P.M. as Transport Assistant in the Movement Section of Indian Air-lines at Hyderabad, that Sri Hari Rao came to him at 3.30 P.M. and asked for a car to go for duty and that he (M.W3) refused to give the car on the ground that the cars are busy with crew duties and that thereafter the incident in question took place. It is also the case of P. R. R. K. Murthy (M.W3) that Sri Rangachari (M. W2) who was Senior Transport Officer was also present at the time of the incident. M.W2 stated in his evidence that on 25-4-1984 he was on duty from 8.00 a.m. to 4.30 P.M., that 2.30 P.M. Sri P. R. R. K. Murthy was allotting duties to Hari Rao, that some arguments took place, that gradually, the tone increased. The learned counsel for the workman argued that there are the inconsistencies in the evidence of Sri Rangachari (M.W2) on one hand and the evidence of Sri Murthy (M.W3) on the other with regard to the time of the incident and the origin of the incident and that this inconsistency is fatal to the Management's case. I am not inclined to agree with the said contention. The workman in the claim statement has not disputed the time of incident as stated in the charge-sheet. It is stated in the charge-sheet that the incident took place at 13.30 hours. The place taken by the workman in the claim statement is that he went to Sri P.R.R.K. Murthy (M.W3) to ask him that he should be provided with a lift to go to Airport from M.T. Section. The workman (W.W1) stated in his evidence that on 25-4-1984 at 3.30 p.m. he went to M.T. Section for asking lift to go to Airport. Further he stated that the incident took place in the presence of Sri Rangachari (M.W2). In the light of the above variations found in the evidence of Sri Rangachari (M.W2) in regard to the time of incident and the origin of the incident, is not fatal to the management case. As stated above there is no dispute that the incident in question took place at 3.30 P.M. on 25-4-1984 and that the workman (W.W1) went to Sri Murthy (M.W3) and asked for a lift and that Sri Rangachari (M.W2) was also present at that time in M.T. Section. It is spoken to by Sri Murthy (M.W3) that he refused to give a car to Hari Rao on the ground that the cars were busy with crew duties, that Hari Rao picked up a quarrel and used filthy language in the office in front of everybody saying "Your Balls Supervisor". I was discharging more responsibilities in the military than you. You are less than a driver. Go to hell I will not care for this management or supervisors". Further he stated that Hari Rao threatened him with dire consequence and that he (workman) advised him to look to his private parts by opening his pant buttons. It is also in the evidence of M.W3 interfered and tried to pacify Hari Rao and that Hari Rao did not listen to M.W2 and started shouting on him. The learned counsel for the workman argued that there is no corroboration to the evidence of Sri Murthy (M.W3) from

Rangachari (M.W2) who was admittedly present at that time. that in the circumstances there are no reasons to dis-believe the version of the occurrence and given by the workman (W.W1) and Md. Habbuddin (W.W2). Having regard to the broad probabilities of the case I am not inclined to agree with the above argument advanced on behalf of workman. There is nothing in the cross examination of Sri Murthy (M.W3) to discredit the testimony of M.W3 in regard to the filthy language used by the workman. There is no cross examination except making a suggestion to the effect that the allegation about Hari Rao using filthy language in false. M.W3 stated that he gave a report of the occurrence marked as Ex. M14 immediately after the incidence. M.W2 is superior to Sri Murthy. He stated in the evidence that Sri Murthy gave a written complaint Ex. M14 so that he could send it to the superiors that he sent the complaint Ex. M14 with the endorsement Ex. M14(a) to the Deputy Controller. Further he stated that he made the endorsement Ex. M14(a) to the effect that it was not the first occasion for Hari Rao misbehaving with the Officers at the time of the incident. The presence of Sri Rangachari (M.W2) at the time of incident and filthy language used by the workman are mentioned in the complaint Ex. M14 given by Murthy (M.W3). From the evidence of M.W3 on the use of filthy language by Hari Rao is fully corroborated by the complaint Ex. M14 given by M.W3 immediately after the occurrence. As already observed, it is also there is the evidence of M.W3, to the effect that the workman advised him to see to his private parts by opening his pant buttons. But, it is mentioned in the complaint (Ex. M14) that the workman showed his private parts. M.W2 clearly admitted in the cross examination that he did not see the delinquent Hari Rao showing his private parts to Mr. Murthy. In as much the evidence of M.W3 is not corroborated by the evidence of M.W2 in this regard it appears to me that it may not be safe to rely on the evidence of M.W3 on the aspect of workman showing his private parts to Mr. Murthy during the incident. M.W2 no doubt stated in the chief examination that some arguments took place between the Murthy and Hari Rao, that gradually tone increased that he tried to interfere and parify that in spite of intervention the arguments and incident continued that he remembered to have heard the words "Hell" "Balls" etc. while there was argument and incident between Hari Rao and Murthy. In the cross examination he stated as follows :—"I remember I heard the words "Hell" "Balls" while I was there in the section. But at this late stage I cannot recollect who actually uttered these words". "In the later part of cross examination he stated as follows:— I remember I admonished only Hari Rao and I advised him that he should not behave like this and I asked him to go and perform his duties. I remember on earlier occasions my oral intervention was sufficient and I could pacify Hari Rao". From the above version of M.W2 in the cross examination, it is clear that Rangachari (M.W2) admonished Hari Rao only and that he advised Hari Rao only not to behave like this and asked him to go and perform duties. In the circumstances the reasonable inference that can be drawn is that Hari Rao was aggressive in the incident and that he used the words "Hell" "Balls" in the incident. Even the endorsement in Ex. M14(a) made by Sri Rangachari (M.W2) on the complaint Ex. M14 given by the Murthy (M.W3) also suggests that Hari Rao was aggressive in the incident. The endorsement Ex. M14(a) made on Ex. M14 reads as follows :—

"The behaviour of drive Sri E. Hari Rao towards all the super staff is most rude and indisciplined. This is not the first occasion, such complaints have come. In spite of my telling him on this occasion, not to behave like this, he continued shouting and arguing I have already informed you on telephone about this incident immediately."

It may be stated endorsement Ex. M14(a) was made on the complaint Ex. M14, by Sri Rangachari (M.W2) when the incident was fresh in his mind. The evidence about the incident is given by Rangachari (M.W2) in this Tribunal. After a lapse of more than four years from the time of incident, He stated frankly in the cross examination that the incident took place more than four years ago that he had retired about 2-1/2 years ago and that he will not be able to recollect all the details of the incident and that the version

given by him in the domestic enquiry is the correct version of the incident, that as to how it started and how it progressed he spoke earlier in the domestic enquiry and that at this distant time he could not recapitulate the details. In the circumstances I am of the view that though the direct evidence of M.W2 does not corroborate the evidence of M.W3, on material particulars in regard to the use of filthy language the various circumstances referred to above in the evidence of M.W2 clearly lend support to the evidence of M.W3 about the use of the filthy language by Hari Rao against Murthy (M.W3). It may be stated that it is not the case of Hari Rao that he has got disputes with Rangachari and Murthy so as to make them to speak falsehood against him. On the other hand, Hari Rao (W.W1) admitted in the cross examination that there are no dispute between him and Murthy and that he had no disputes with Sri Rangachari. In the light of the above discussions, I find that Sri Hari Rao to go to Air Port and that Sri Hari Rao continued to rant, when Sri Murthy refused to provide a lift to Sri Hari Rao to go to Air Port and that Sri Hari Rao continued to shout at Sri Murthy despite the advice given by Sri Rangachari to Sri Hari Rao for not to misbehave with the Murthy. Thus both the charges framed against Sri Hari Rao constituting his conduct implies the meaning of Cl. 28(8) and Cl. 28(20) of the Standing Orders.

17. Sri S. Hari Rao had adduced his own evidence as W.W1 and one Sri Habibuddin as W.W2 to give his version of the incident. Hari Rao stated that on 25-4-1984 at 3.03 p.m. he went to the M.I. Section and asked for a lift to go to Airport; that Murthy did not provide him with lift; that Murthy accosted him saying "you are no use to me. Why should I provide you a lift"; that he gave a reply stating as to in what way he should be useful to him that Murthy again stated "You are going in the morning and coming in the evening and doing nothing" and he should be ashamed of being an ex-serviceman and driving hardly 10 to 15 kilometres and even a lady can perform your duties. Hari Rao further deposed that Rangachari (M.W2) was present at that time, the Rangachari asked him (W.W1) to keep quite saying that he would look into the matter that Rangachari would provide lift and that he went to Airport for duty; that one lady Typist and one Habibuddin were present at that time. Hari Rao also deposed that he did not have good relations with Transport Superintendent by name Somayajulu, that Somayajulu was requesting him to get articles like liquor, soap and hair oils from the Military Canteen without giving any money, that he (W.W1) stopped bringing the above articles from the Military Canteen for Somayajulu as Somayajulu was not paying money.

18. It may be stated that he did not say anything in the chief examination connecting Somayajulu with the incident. He also admitted that he did not make any reference to Somayajulu either in explanation dt. 25-4-1984 (Ex. M3) given by him or in the enquiry proceedings Ex. M9. He also admitted in the cross examination that he did not complain to the Management against Somayajulu. He also admitted that Somayajulu had no connection with the charge sheet Ex. M1 issued to him. It is only in the cross examination that Hari Rao stated that Somayajulu was the instigator for the charge sheet. It is significant to note that it is not suggested to Rangachari or to Murthy that Somayajulu instigated them to make allegations for the issue of Charge sheet Ex. M1 to Hari Rao. In the circumstances it is difficult to say that Somayajulu is the instigator for the issue of charge sheet (Ex. M1) as stated by Hari Rao in the cross examination. In the above discussions it is already pointed out that there is an admission made by Hari Rao to the effect that he had no disputes whatsoever with Rangachari and Murthy prior to the incident. In my view the manner of occurrence as spoken to by Hari Rao is not consistent with the natural course of events. It is Hari Rao who went to Murthy to ask for a lift. It is not in dispute that Murthy did not provide lift to Hari Rao. In such a situation it can only be Hari Rao who can be an aggrieved party to pick up quarrel with Murthy. Further I do not see any reason for Murthy (M.W3) to pick up quarrel with Hari Rao in the first instance. Furthermore it is not a case where Hari Rao has a right to demand Murthy for providing a car to him to go to the Airport. The Senior Transport Officer Rangachari (M.W2) clearly stated that there

is no rule to provide a transport for a driver to take up duty and that no driver can stop going from duty just because a car is not provided. Further it is not the case of Hari Rao that Murthy asked for certain obligations from him and that he did not oblige Murthy in that regard. In the circumstances it is difficult to believe the version of Hari Rao in saying that Murthy accosted him saying that you are no use to me why should I provide you a lift. Furthermore if Murthy was aggressive as contended by Hari Rao in his evidence it is natural for Hari Rao to have given a complaint to Rangachari (M.W2) who was admittedly present at that time. It is significant to note that it is not the case of Hari Rao that he has got any disputes with Rangachari. On the other hand he admitted that he had no disputes with Rangachari whatsoever. It is strange to find Hari Rao in not having given any complaint to Rangachari. The above conduct of Hari Rao suggests that the incident in question has not taken place in the manner as spoken to by Hari Rao.

19. Md. Habibuddin (W.W2) stated in the evidence that he is working as Driver in the Indian Airlines Corporation, that on 25-4-1984 he was on the afternoon shift; that Tea break is from 3.00 p.m. to 3.15 p.m., that on 25-4-1984 he took his tea break from 3.15 to 3.30 p.m. that he was about to leave for duty that Hari Rao asked him to drop him (Hari Rao) at the Airport that he told him to the effect that he had to take permission from the Transport Assistant that himself and Hari Rao went to Transport Assistant for taking permission, that Hari Rao went and asked Murthy for permission, that Hari Rao and Murthy talked to each other in English, that he cannot say what was said, that he does not know English, that Murthy was talking in a loud voice and that Hari Rao was talking in a loud voice, that Rangachari and Typist were also present, that Rangachari spoke to Hari Rao that Rangachari asked him (W.W2) to drop Hari Rao at the Airport, that he dropped Hari Rao at the Airport.

20. As seen from the above evidence Md. Habibuddin was about to leave for duty at 3.30 P.M. on 25-4-1984 after the tea break, that Hari Rao asked him to drop him at the Airport, that he told him to the effect that he had to take the permission from the Transport Assistant that himself and Hari Rao went to Transport Assistant for taking permission. The said version of W.W2 does not find corroboration from evidence of Hari Rao which is referred to in the above discussion. W.W2 was on the way to Air Port at that time. There does not appear to be any need for W.W2 to take the permission from the Transport Assistant to take Hari Rao along with him at the time of going to Airport, as he was not going to drop Hari Rao exclusively at the Airport. Thus the version of W.W2 going to Transport Assistant (M.W-3) for taking permission is not consistent with the probabilities of the case. W.W2 further stated that himself and Hari Rao asked Murthy for permission and that Hari Rao and Murthy talked to each other in English and that he cannot say what was said as he does not know English. It is already observed by me that there does not appear to be any need for W.W2 to have gone to Transport Assistant for taking permission to take Hari Rao to the Airport. Even if it is said that permission was necessary, it is for Md. Habibuddin to ask the permission from the Transport Assistant. So it does not stand to reason for Hari Rao to seek the permission of the Transport Assistant in going in the vehicle of Md. Habibuddin to the Airport. In such a case there is no scope for alternation between Hari Rao and Transport Assistant. Furthermore, it is not the case of W.W2 that the Transport Assistant refused permission for taking Hari Rao to the Airport. What made Hari Rao and Murthy to altercation with each other is not made out in the evidence of W.W2. In the circumstances, I am not convinced with the presence of W.W2 at the time of incident. The Management no doubt relied upon the entries made in Log Book Ex. M-19 and the Movement Register Ex. M-20 in order to show that W.W2 could not have been present at 3.30 P.M. on 25-4-1984 in the M.T. Section where the alleged incident took place. Ex. M-15 is an entry at page 33 of the Movement Register Ex. M-20 and it shows that Md. Habibuddin was given vehicle bearing No. 6747 at 12.40 hours and that he returned the vehicle at 16 hours W.W2 admitted that he signed at the bottom of page 23 under Ex. M-15. Further he stated that the time out entry i.e., 12.40 hours mentioned in Ex. M-15 indicates the time when he arrived at duty. The entry in Ex. M-17 in the Log

Book shows "Time-Out" as 13.00 hours in respect of the vehicle ADU 6747 given to WW-2 and the "Time-in" is shown as 16.00 hours. Further WW-2 stated that he came to M.T. Section at 3.30 P.M. for tea as the aircraft was late. There is no evidence on the side of the management in regard to the arrival of aircraft to discredit the evidence of WW-2. In the circumstances I am of the view that Exs. W-15 and M-17 cannot establish conclusively that WW-2 could not have been present in M.T. Section at 3.30 P.M.

21. Whatever it may be the various circumstances referred to above, clearly go to show that the manner of occurrence as spoken to by WW-2, is not believable.

22. In the above discussion it is held that both the charges framed against Hari Rao constituting misconduct within the meaning of Clause 28(8) and 28(20) of the Standing Orders have been proved. The learned counsel for the workman argued that the Management took into consideration Exs. M-21 to M-23 relating to past instances, at the time of passing the order of dismissal against the workman, that the consideration of the said documents is bad in law as they are not part of the charge sheet and also for the reason that no opportunity was given to the workman to explain the same; that in this view of the matter the order of dismissal is not sustainable. Ex. M-21 relates to incident taken place on 8-1-1984 and the workman was said to have behaved rudely against the duty Supervisor. Ex. M-22 dated 13-3-1984 relates to the incident taken place on 1-3-1984 and the workman was said to have behaved rudely against the Security Guard. Ex. M-23 dated 6-6-1983 relates to an incident taken place on 26-5-1983 and the workman was said to have damaged the vehicle ADR 8817 by rash and negligent driving. It is not in dispute that the workman gave satisfactory explanation in respect of Ex. M-21 and M-22 and that action was dropped against the workman in respect of the said two incidents. It is admitted by the workman (WW-1) that he paid the damages in respect of the incident covered by Ex. M-23. Ex. M-18 is the notice dated 24/29-1-84 given by the Disciplinary Authority requiring the workman to show cause within seven days as to why the punishment of dismissal should not be imposed on him for the misconduct proved against him. In the said show cause notice, the past conduct of the workman relating to the incident covered under Ex. M-23, alone is mentioned. Thus it is not correct to say that Exs. M-21 and M-22 were taken into consideration by the Management in imposing the punishment. However it is borne out from Ex. M-18 that the Management took into consideration the past record covered by Ex. M-23 in imposing the punishment. The contention of the learned counsel for the workman is that that it is not proper to bring in past record in deciding penalty unless it is made the subject matter of the charge etc. In support of the same he filed xerox copy of the instructions issued by the Government of India under the proceedings dated 23-8-1968. In my view the said instructions were given to provide an opportunity to the workman to meet the past record which the Management wants to use against the workman. It may be stated that in the present case the workman is given opportunity to meet the past incident relating to Ex. M-23 by mentioning the same in the showcause notice. Ex. M-28 issued by the Management proposing punishment of dismissal for the misconduct proved against the workman. In the circumstances I do not find any illegality on the part of the Management in considering Ex. M-23 at the time of imposing the punishment for the misconduct proved against the workman. The learned counsel for the workman also cited the decision of our High Court in W.P. No. 17425/87 in support of the contention that the award passed by the Tribunal justifying the removal of an employee by the Management after considering the past record service of the employee, is not legal. In my view the above decision is not applicable to the facts of this case. It was a case where the past record of service was neither considered nor referred to either by the workman or by the Management at the time of enquiry against the workman. However the past record of service has been considered in detailed fashion by the lower Court while coming to the conclusion that the order of removal is justified in the circumstances of the case. Under those circumstances it was held in that case that the Labour Court should have come to the conclusion that the order of removal is justified only on the basis of the application and on the basis of the material

and not taking into consideration the past record of the service of the workman. In the present case the past record of service was considered by the Management and an opportunity was also given to the workman to explain the past record in the show cause notice Ex. M-18 issued to the workman, thus the above decision is not applicable to the facts of this case.

23. The learned counsel for the Management argued that the workman in question was terminated by an order dated 13-3-1985, that the workman preferred appeal under Regulation 193 of the Indian Airlines Employees Service Regulations and that the Appellate Authority by its order dated 3-1-1986 marked as Ex. W-4 had taken a lenient view and also on his assurance of good behaviour directed re-appointment of the workman as Driver in M.T. Section, that once the workman has been reinstated under the Appellate Order dated 3-1-1986 the earlier order terminating the services of the workman ceases to exist, that the reference dealing with the termination is wholly without jurisdiction as that order has been set aside. Reliance is placed on the case of Somnath Sahu v. State of Orissa and others (1969) (3)-SCC page 384. The learned counsel for the workman argued that once the reference has been properly made to the Industrial Tribunal that dispute has to be resolved by the Industrial Tribunal and it is a substance which matters and not the forum and every fact and circumstances relevant to the ascertainment of substance deserve careful attention. The reliance is placed on several decisions cited in support of the above contention in the written arguments filed on behalf of the workman. In my view it is not necessary to refer to any of the decisions cited by the counsel for the Management or by the Counsel of the workman. It is not in dispute that the workman in question was terminated by an order dated 20-2-1985/13-3-1985. It is also not disputed that the workman preferred an appeal and that Ex. W-4 is the appellate order. A reading of Ex. W-4 goes to show that the order of dismissal passed by Management in its order dt. 20-2-1985/13-3-1985 was confirmed. However the Appellate Authority on humanitarian grounds ordered reappointment of the workman in question as Driver as a fresh entrant. The relief given in Ex. W-4 is only a re-appointment of the workman on humanitarian grounds but not a reinstatement as contended by the learned counsel for the Management. Thus it is a case where the appeal filed by the workman against the dismissal order dated 13-3-1985 was dismissal confirming the dismissal order dated 13-3-1985. The reference also relate to the dismissal order dated 20-2-1985/13-3-1985. In the circumstances the contention of the Management fails.

24. The next aspect to be considered is whether the punishment of dismissal is proportionate or not for the misconduct proved against the workman. The incident is not a pre-planned incident. Further it was sudden outburst by the workman using filthy language against Sri Murthy, for the reason of Sri Murthy refusing to give a car to the workman on the ground that cars are busy with crew duties. Even the Appellate Authority in its order dated 3-1-1986 gave an offer to the workman for reappointment as a Driver in M.T. Section. Taking all these facts into consideration, I am of the view that the order of dismissal passed by the Management for the misconduct proved against the workman is severe. In my view it will meet the end of justice by stoppage of three increments with a future effect for the misconduct proved against the workman in the place of dismissal ordered by the Management. The workman no doubt prayed for reinstatement at Hyderabad only. The posting of an employee is purely an administrative function of the management. It is not open to this Tribunal to interfere in these matters. So the said relief of the workman is not accorded by this Tribunal.

25. Accordingly I find that the dismissal of the workman is not justified and the Management shall withhold three annual increments with future effect from the wages of the workman. It is admitted that the workman was in gainful employment in Bharat Petroleum Corporation from 23-3-1987 to 31-10-1988. The Management is directed to reinstate the workman forthwith and the workman is entitled to wages the date of dismissal till the date of reinstatement, after excluding the period of gainful employment from 23-3-1987 to 31-3-1988; with consequential benefits and all other attendant benefits.

Award is passed accordingly.

C. RAMI REDDY, Industrial Tribunal

[No. L-11012/12/86-D.II(B)/IR (Misc.)]

APPENDIX OF EVIDENCE

Witnesses Examined
for the Management :

MW-1—A. A. Samuel

MW-2—T. M. Rangachari

MW-3—P. R. R. K. Moorthy. Habeebuddin

Documents marked for the Management

Ex. M-1—Charge Sheet No. HYP : DIS : 2230, dated 7/10-5-1984 issued to E. Hari Rao, by the Deputy Controller, Ground Support, Hyderabad.

Ex. M-2—Letter appointing A. A. Samuel, Assistant Manager, Personnel Services, Madras as Enquiry Officer, addressed to E. Hari Rao, by the Deputy Controller, Ground Support vide memo No. Hyd. PER : DIS 2590 dated 31-5-1984/1-6-84.

Ex. M-3—Representation dated 25-5-84 made by E. Hari Rao to the Deputy Controller, Ground Support, Southern Region, Hyderabad.

Ex. M-4—Letter No. MAA : ADMN : DISC : AAS dated 25-6-84 from A. A. Samuel, A.M.P.S., Madras addressed to E. Hari Rao fixing the first sitting of the enquiry for 6-7-84.

Ex. M-5—Letter dated 30-6-1984 from E. Hari Rao, addressed to A. A. Samuel, A.M.P.S., Madras requesting for the assistance of A. S. Venkata Rayudu, Accounts Supdt., Indian Airlines, Bangalore as a friend for the enquiry.

Ex. M-6—Letter No. MAA : ADMN : DISC : AAS dated 2-7-84 from A. A. Samuel, A.M.P.S., Madras addressed to E. Hari Rao according to the request for having A. S. Venkata Rayudu as a friend and the endorsing a copy of the same to station Manager, Bangalore to provide necessary facilities of air passage to A. S. Venkata Rayudu as per rules.

Ex. M-7—Letter No. Hyp : DIS : 4125, dated 20-8-84 from T. R. Ramachandran A.M.P.S. (Presenting Officer), He addressed to A. A. Samuel, A.M.P.S., (Enquiry Officer), Madras requesting for reopening of the enquiry stating that he had come across certain records that would prove that the defence witness could not have been present at the time and place of the incident under enquiry.

Ex. M-8—Letter No. MAA. DISC, ENQ, AAS, dated 26-8-1984 from A.A. Samuel, A.M.P.S. (Enquiry Officer) Madras addressed to E. Hari Rao informing him that the Presenting Officer had requested for the reopening of the enquiry and stating the reasons specified by the Presenting Officer and fixing the next sitting of the enquiry for 6th September, 1984. The letter also mentions about the returning of the final submission sent by the Defendant to the Enquiry Officer.

Ex. M9 Enquiry Proceedings.

Ex. M10 Enquiry Report.

Witnesses Examined
for the Workmen :

WW-1—E. Hari Rao

WW-2—Mohammad

Ex. M11 Letter No. Hyp. TRR. 5562. A dated 19-11-84 from T. R. Ramachandran, A.M.P.S. (Presenting Officer) Hyderabad addressed to A.A. Samuel, AMPS (Enquiry Officer), Madras with regard to Summary of the case with a copy marked to the defendant posted by Registered Acknowledgement due to his residential address shown on the reverse of page 3.

Ex. M12 Final submission of E. Hari Rao dated 28-11-1984 addressed to A.A. Samuel A.M.P.S. (Enquiry Officer), Madras.

Ex. M13 Part of Enquiry Proceedings in Ex. M-9 at page 34.

Ex. M14 Complaint dated 25-4-1984 given by P.R.R. Krishna Moorthy, Sr. Transport Asstt. I.A., Hyderabad to the Dy. Control, Indian Airlines, Hyderabad against F. Hari Rao.

Ex. M14(a) Remarks of T. M. Rangachari on the complaint given by P.R.R. Krishna Murthy against E. Hari Rao (in Ex. M14) at page 1.

Ex. M15 Movement Register of Indian Airlines with regard to Vehicle No. 6647 at page 33.

Ex. M16 Movement register of Indian Airlines with regard to Vehicle No. 6647 at page 36 in 1. Ex. M15.

Ex. M17 Transport Log Book with regard to Vehicle No. ADU-6647 at page 9.

Ex. M18 Photostat copy of the Show cause notice issued by the Deputy Controller, Ground Support, Hyderabad to E. Hari Rao, vide Memo No. Hyp. DIS, 452, dated 24/29-1-1985—show cause for dismissal.

Ex. M19 Transport Log Book of Indian Airlines.

Ex. M20 Movement register of Indian Airlines.

Ex. M21 Letter dated 9-1-1984 addressed to E. Hari Rao by the Dy. Controller, Ground Support Division I.A. Hyd, with regard to discipline.

Ex. M22 Letter dated 13-3-1984 addressed to E. Hari Rao by the Deputy Controller, Ground Support Hyd. with regard to discipline.

Ex. M23 Memo dated 6-6-1983 issued to E. Hari Rao by the Deputy Controller, Ground Support, Hyderabad.

Ex. M9(a) Part of enquiry proceedings in Ex. M9 at page 7.

Documents marked for the Workmen.

Ex. W1 Photostat record copy of Indian Airlines pertaining to E. Hari Rao.

Ex. W2 True copy of the complaint dated 25-4-1984 given by P.R.R. Krishna Murthy, Senior Transport Asstt. I.A., Hyd, to the Deputy Control, Indian Airlines, Hyderabad against E. Hari Rao.

Ex. W3 Remarks of T. M. Rangachari Sr. Transport Officer dated 25-4-1984 to Dy. Controller on the complaint given by P.R.R. Krishna Murthy against E. Hari Rao.

Ex. W4 Letter dated 3-1-1986 of Regional Director, Indian Airlines Madras to F. Hari Rao with regard to re-appointment.

Ex. W5 Letter dated 10-1-1986 of Manager Personnel Services, Madras Indian Airlines to E. Hari Rao, re-appointing him as Driver.

C. RAMI REDDY, Industrial Tribunal.

नई दिल्ली, 5 जनवरी, 1990

को. अ. 212 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत सोल्ड माइन्स लि., ओर्गाम, के. जी. एफ. के प्रबंधकों के सम्बन्ध निष्ठावर्ती और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूरु के पंचवट का प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-1990 को प्राप्त हुआ था।

New Delhi, the 5th January, 1990

S.O. 212—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Limited, Oorgaum, K.G.F. and their workmen, which was received by the Central Government on 2-1-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated 21st day of December, 1989

PRESENT :

Shri B. N. Lalge, B.A.(Hons.), I.L.B., Presiding Officer.
Central Reference No. 19/88

I PART :

Shri Muniswamy C/o The President Bharat Gold Mines' Association, Oorgaum P.O. K.G.F.

Vs

II PARTY :

The Chairman cum Managing Director M/s. Bharat Gold Mines Limited, Oorgaum P.O. K.G.F.

APPEARANCES :

For the I Party—V. Gopala Gowda, Advocate.

For the II Party—K. J. Shetty, Advocate.

AWARD

By exercising its powers under Section 10 (1)(d) and (2A) of the Industrial Disputes Act, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. L-43012/1/88-D-III(B) dated 29-4-1988.

POINT OF REFERENCE

"Whether the management of Bharat Gold Mines Limited, K.G.F. is justified in dismissing the services of Shri Muniswamy, Fitter-I. If not, what relief the workman is entitled to?"

2. In the claim statement, the I party workman has put forth his case as follows :

He has put in 36 years of blameless service in the II party mine. The management has dismissed him with effect from 4-11-1982. He was kept under suspension on 26-4-1982. A charge-sheet dated 27-4-82 was issued to him, alleging that he had committed theft of 5 gold pieces and committed an act of misconduct under Standing Order No. 15(b) and 34 of the II Party. He had given his explanation dated 4-5-1982. The II party was not satisfied. It held an enquiry by appointing Sri V. R. Natarajan, Personnel Officer. A notice of enquiry dated 8-5-82 was issued to him. The

domestic enquiry was held from 26-5-1982 to 5-7-1982. The Enquiry Officer gave his findings. The findings are perverse. The management issued a Show-cause Notice dated 21-9-1982. He submitted his explanation dated 28-10-1982. Then, the management dismissed him by an order dated 4-11-1982. Thereafter, he raised an industrial dispute. He was prosecuted before the Principal J.M.F.C. at K.G.F. in C.C. No. 1843 of 1982. He has been acquitted by a judgement dated 6-3-1987. His dismissal is illegal. The charge-sheet issued to him is vague. He was not given the copies of documents on which the management relied upon. The Enquiry Officer did not follow the proper procedure. There was no Presenting Officer. The Enquiry Officer acted as a judge and a prosecutor. The proceedings were conducted in English and were not explained to him. Copies of day to day proceedings were not given to him. He was not given the opportunity to cross-examine the prosecution witness effectively. The Enquiry Officer did not examine the mahazar witnesses, though the mahazar was marked as Ex. M-1. The alleged stolen property was not produced before the Enquiry Officer. The Enquiry Officer should not have accepted the evidence of MW-8 Dwarakanath. The Enquiry Officer was biased. He was not allowed to examine his witnesses. The findings are perverse. The disciplinary authority had not applied its mind independently. His explanation given to the second show-cause notice has not been considered. He is the sole breadwinner in his family. The order of dismissal may be set aside.

3. The II party management has filed its counter statement and has, inter alia, contended as follows :

It is denied that he has served honestly and sincerely. The explanation given to the show-cause notice dated 27-4-82 was not satisfactory and hence an enquiry was ordered. On due enquiry, he was found guilty and hence a second show-cause notice was issued to him. His explanation was satisfactory. The misconduct committed by him amount to moral turpitude. The order of dismissal is proper. The criminal proceedings have nothing to do with the domestic enquiry. The charge sheet is not vague. The copies of required documents were given to him. The Enquiry Officer has followed the proper procedure. It is denied that the Enquiry Officer has acted as a prosecutor and a judge. The proceedings were read over, translated and explained to him. The copies of the proceedings were given to him. The mahazar has been properly admitted in evidence. The property was produced before the criminal court. The assayer Dwarakanath has given evidence regarding the property seized from him. The proceedings were conducted in the presence of his assistant. The findings are based on the material placed on record. The II party management has carefully considered the evidence against him before passing the order of dismissal. The contention that he is the only earning member is not relevant, since he is involved in the theft case. The punishment is proper. The reference may be rejected.

4. In view of the said pleadings, a preliminary issue as shown below was raised.

"Whether the Second Party proves that it has conducted the domestic enquiry in accordance with law?"

5. The parties were called upon to adduce evidence on the same.

6. On recording evidence and hearing the parties, a considered order dated, 20th June, 1989 has been passed holding that the management has established that the domestic enquiry held against him is in accordance with the law.

7. Further opportunities were given to the parties to adduce evidence on rest of the issues.

8. Thereafter, the workman was again recalled and examined and Ex. W-1 was marked.

9. The parties have been heard.

10. My finding on the point of reference is as follows :

The management of Bharat Gold Mines Limited, K.G.F. is justified in dismissing Shri Muniswamy, Fitter-I, and that he is not entitled to any relief.

REASONS

11. Since a finding has been already recorded that the management has established that the domestic enquiry is in accordance with the law, the only contention that requires for further consideration is whether the findings are perverse and whether the order of dismissal is sustainable in law.

12. Perverity has two tests. The first one is whether the Enquiry Officer has based his findings on evidence, which is not legally admissible. The second test is whether any reasonable and prudent man could have arrived at the findings complained of.

13. The Enquiry Officer, MW-1 Natarajan has relied upon the evidence of eight witnesses who had been actually examined before him. From the order sheet maintained by him at Ex. M-4, it is obvious that the I party workman and his assistant had been provided with all the opportunities to cross-examine all the eight management witnesses. There is no dispute on the point that these eight witnesses had been examined in the presence of the workman and his assistant. In para 15 of his evidence, MW-1 Natarajan, the Enquiry Officer has emphatically sworn that on 14-6-1982 itself, he had informed the workman that the assayer Dwarkanath was going to be examined. There is nothing to disbelieve the evidence of MW-1 Natarajan. The only document taken on record by the Enquiry Officer was a copy of the mahazar, Ex. M-10. In para 6 of his evidence, recorded on 2-5-1989, the workman MW-1 Muniswamy has sworn that he had attended the proceedings on each and every day and that he did not complain to the management that copies of documents were not given to him. The copy of the mahazar Ex. M-10 was shown to him. He had stated that he does not know whether the management had produced Ex. M-10 before the Enquiry Officer. Thus, there is concrete evidence of the Enquiry Officer, MW-1, on the one hand that a copy of the mahazar was produced in the enquiry whereas, there is no specific denial from the workman that it was not produced. MW-2 Shri N. Balasubramanian has produced the original of Ex. M-10 and he has stated that this was a mahazar drawn up when the workman was caught. Proper custody of the original of Ex. M-10 has also been proved. The contention raised regarding the inadmissibility of Ex. M-10 or its original is of no avail. Strict rules of evidence Act are not applicable to the domestic proceedings. On going through the original mahazar, I find that it bears the thumb mark of the I party workman Muniswamy. The thumb mark on the original mahazar is compared with the thumb mark on original charge-sheet of Ex. M-1, the notice of enquiry, Ex. M-2 and the day to day proceedings at Ex. M-3. The workman MW-1 Muniswamy, has admitted about his thumb mark in the proceedings at Ex. M-3 (b). A bare look with the thumb mark on the original mahazar dated 24-4-82 and the thumb mark at Ex. M-3 (b) would show that the original mahazar is a genuine document. Since the Enquiry Officer has relied upon the evidence of eight witnesses, who were actually examined before him and the mahazar, I find that it is not a case wherein the Enquiry Officer has based his findings on no evidence or on evidence which was inadmissible.

14. The allegation against the workman was that on 24-4-82 at about 12.50 p.m., when he was searched at the Mill Gate Searching Yard of the Mysore Mine Mills, he was found taking with him five gold pieces in his banian pocket and he was caught red-handed during a search by watchman, Madan Lal. These particulars have been specifically pointed out in the charge-sheet, Ex. M-1. Ex. M-2, the notice of enquiry shows that the management intended to examine seven witnesses, such as: (1) Madan Lal, (2) Rameshwar, (3) Govinda Rao, (4) Meganathan, (5) Xavier, (6) Udhaya Shankar and (7) Srinivasan. Ex. M-2 further shows that if found necessary, the management intended to examine some more witnesses also. The proceeding of 26-8-1982 disclose that the charge-sheet was explained to him and the workman pleaded not guilty and that he sought for the assistance of Jayaseelan, an office bearer of the

B.G.M.L. Union. There is no dispute that he was provided with the said assistance.

15. On 26-5-1982, witnesses such as PW-1 Madan Lal, PW-2 Rameshwar Ram, PW-3 Govinda Rao and PW-4 Meganathan have been examined. The workman had sought for time to cross-examine them. His prayer was granted. On 3-6-82, the I party workman has availed of the opportunity and has cross-examined PW-1 Madan Lal, PW-2 Rameshwar Ram, PW-3 Govinda Rao and PW-4 Meganathan. The evidence of PW-1 Madan Lal points out that when he proceeded to make a thorough search the I party Muniswamy tried to run away, but he was caught by PW-2 Rameshwar Ram and brought back to the searching yard and when his banian was searched, some currency notes and five gold pieces were found. The evidence of PW-1 Madan Lal and PW-2 Rameshwar Ram is sufficient substantiated by PW-3 Govinda Rao and PW-4 Meganathan. In his statement given before the Enquiry Officer, the workman has stated that there was no illwill between himself and the watchman PW-1 Madan Lal. The evidence of PW-4 Meganathan shows that the gold pieces were sealed at about 3.45 p.m. PW-5 Xavier, the Manager has vouchsafed about the seizure and has substantiated the evidence of the earlier witnesses in all the material points. His evidence further discloses that the seized property was immediately taken to the Central Assay Office and a mahazar was prepared about the seizure. The evidence of PW-6 Srinivasan, Foreman indicates that the workman had tried to run away but he was caught and on due examination, the five pieces of gold were found with him. PW-7 Udaya Shankar, the Assistant Manager has stated before the Enquiry Officer that on due search, the five pieces of yellow metal were found, with the I party workman and that all of them immediately went with the property to the Central Assay Office and handed over the same to the Chemist Dwarkanath. He has also testified to the effect that the assayer PW-8 Dwarkanath took some sample and found that the seized material was gold. The cross-examination of PW-7 Udaya Shankar discloses that the search was conducted in accordance with the law. The I party workman had ample opportunity to cross-examine the Manager, PW-5 Xavier on a subsequent date, viz. 26-8-82, though his examination-in-chief was done on 14-2-82. The I party workman had likewise given sufficient opportunity to cross-examine PW-6 Srinivasan, the Foreman. The proceeding of 26-8-82 discloses that since seized property had been produced before the court, the management had no other go than to produce only the copy of the mahazar before the Enquiry Officer.

16. The evidence of PW-8 Dwarkanath, the assayer discloses that on the same day at 2.45 p.m. the property had been brought to him and he opened the box in the presence of witnesses such as PW-5 Xavier, PW-7 Udaya Shankar etc. and he found that the five pieces weighed as follows:—

Weight of the Pieces

6.93 grams
1.26 grams
0.58 grams
0.54 grams &
0.25 grams.

He has valued the property at Rs. 71 and odd.

17. The enquiry proceedings, Ex. M-3 and the Order Sheet, Ex. M-4 substantiate the evidence of MW-1 the Enquiry Officer Natarajan.

18. In his evidence before the Enquiry Officer, the workman Muniswamy has stated that he does not know anything about the matter and the watch and ward people must have put something in his pocket. The contention now raised by the learned counsel for the I party that the Enquiry Officer should not have accepted the evidence of PW-8 Dwarkanath and should not have held that the seized property is gold is of no avail, when it is the case of the I party workman that something had been planted in his pocket by the watch and ward people and when it is not his case that the seized property was not at all gold. It has not been pointed out that the workman had ever raised

any such contention that the management should not have accepted the evidence of PW-8 Dwarakanath in his reply to the second show-cause notice. The main document, Ex. M-8, viz., the complaint signed by Govinda Rao gives all the particulars, including the names of the witnesses and it rules out any kind of concoction. The findings recorded by the Enquiry Officer in his report, Ex. M-5 are based on substantial evidence. The findings of the learned magistrate in the judgment, Ex. W-1 cannot be a criteria to assess the merits of the report of the Enquiry Officer, Ex. M-5. The findings of the Enquiry Officer have been recorded in 1982, whereas the judgement is dated 6-3-1987.

19. Ex. M-6 is the second show-cause notice and Ex. M-7 is the order of dismissal.

20. On going through the evidence on record, I find that it is not a case where any reasonable and prudent man would not have arrived at the findings complained of, on the basis of the material placed on record.

21. There is no case of victimisation or unfair labour practice either alleged or proved by the 1 party.

22. In my view, since it is a case of theft, the punishment of dismissal is a proper one and does not call for any interference under Section 11-A of the I.D. Act.

23. In the result, an award is passed to the effect that the management of Bharat Gold Mines Limited, K.G.F. is justified in dismissing Shri Muniswamy, Fitter-I with effect from 4-11-1982 and that he is not entitled to any relief.

B. N. LALGE, Presiding Officer

[No. L-43012/1/88-D.III(B)]

नई दिल्ली, 9 जनवरी, 1990

का. प्र. 213 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, इण्डियन एयर लाइम्स लिमिटेड, चित्तूरपुर, गंजम के प्रबंधक के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, उड़ीसा, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-1989 को प्राप्त हुआ था।

New Delhi, the 9th January, 1990

S.O. 213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Orissa, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Rare Earths Limited, Chitrapur, Ganjam, and their workmen, which was received by the Central Government on 27-12-1989.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT

Shri S. K. Misra, LL.B.,
Presiding Officer,
Industrial Tribunal,
Orissa, Bhubaneswar.

Industrial Dispute Case No. 35 of 1988 (Central)
Dated, Bhubaneswar, the 18th December, 1989

BETWEEN

The Management of
M/s. Indian Rare Earths Limited,
Chatrapur, Ganjam.

.....First Party-Management.

AND

Their workman, namely,
Shri Narasingha Sahoo,
represented through the
Rare Earth Employees' Union,
OSCOM, Matikhale, Chatrapur,
Ganjam.

.....Second Party-workman.

APPEARANCES

Shri S. K. Pattnaik, Manager,—For the First (Personnel & Administration) Party-Management.

Shri A. K. Choudhury, General Secretary of the Union.
.....For the Second
Party-workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their order No. L-25012/14/88-D.III(B) dated 12-9-1988 have referred the following dispute for adjudication by this Tribunal :—

"Whether the action of the management of M/s. Indian Rare Earths Ltd. (OSCOM), Chatrapur, Ganjam in terminating the services of Shri Narasingha Sahoo, Unskilled worker w.e.f. 28-10-87 is justified? If not, to what relief is the workman entitled?"

2. The aforesaid dispute arose under the following circumstances :—

The second party-workman, who had been working as Unskilled worker in the establishment of the first party-management on daily wage basis was appointed as an Unskilled worker against a regular post with effect from 1-11-86 in the pay scale of Rs. 410-750. His services were terminated without assigning any reason by an order passed by the first party-management on 27/28-10-87 without any notice or without payment of any compensation. After such termination a dispute was raised on his behalf by the Rare Earth Employees' Union, which on failure of conciliation has been referred for adjudication.

The second party-workman in his statement of claim contended that as per the settlement made on 9-8-86 between the Indian Rare Earths Limited (I.R.E.Ltd.) and the Union, a decision had been taken that all employees of I.R.E.Ltd. in the regular Pay scales will be deemed to have been confirmed in their respective posts effective from the date they have completed six months of service in the pay scales except in the case of employees whose probation have been specifically extended by issuing orders passed to that effect or there has been break of service. The decision was published by a notice issued by the First Party-Management on 8-10-86. The complaint of the second party-workman is that in spite of such settlement and for no reasons whatsoever, his employment was terminated by the First Party-Management with effect from 28-10-87 without assigning any reason, without calling for any explanation from him and without any enquiry whatsoever to his knowledge. Besides, there was no payment of any compensation to him at the time his services were terminated. He claimed that such action of the Management is arbitrary and unjustified and as such, he is entitled to reinstatement with full back wages and other service benefits.

3. The First Party-Management in its written statement contended that the termination of employment of the workman was brought about in accordance with the terms and conditions of appointment and that it was not a case of retrenchment to attract the provisions of the Industrial Disputes Act. It was stated that the second party-workman on his appointment accepted the terms of employment contained in the appointment letter. It was stipulated in the said

appointment letter : "His appointment is further subject to his return of attached attestation form in (in triplicate) duly completed and attested by any of the authorities indicated in the form." The attestation form and the contents thereof, according to the Management, formed part of the appointment letter and it is clearly mentioned therein that if it clearly mentioned therein that if it comes to the notice of the Management at any time during the service of a person that he furnished false information or there has been suppression of any factual information, his services would be liable to be terminated. According to the Management, on the date of furnishing the declaration in the attestation form that is on 2-12-86 the second party workman had been involved in G.R. Case No. 472 of 1984 pursuant to P.S. Case No. 162 dated 26-7-84, U/S 454.390/324 of the Indian Penal Code. In connection with this case, the workman had been arrested by the Police on or about 26-7-84 and had been released on bail. The workman, however, in the attestation form at items A, B, C and D deliberately suppressed the aforesaid fact and furnished false information knowing the same to be false. The Management's plea on the dispute referred for adjudication is that the termination of employment of the second party was made not arbitrarily or whimsically but in terms of the contract of employment contained in the appointment letter issued to him and as such, there was no necessity of putting the workman to notice or subjecting him to any domestic enquiry, in as much as, the termination of his services did not amount to infliction of any punishment. It was only a termination simplicitor.

The second party-workman filed a rejoinder reiterating the pleas advanced on his behalf in the statement of claim and challenging the action of the Management in terminating his employment as one brought about ignoring the rules of natural justice.

4. On these pleadings the following issues were framed :

- (1) Whether the action of the management in terminating the services of the second-party-workman w.e.f. 28-10-87 is legal and/or justified ?
- (2) To what relief, if any, the second party-workman is entitled ?

Both the issues are taken-up together for consideration.

5. The second party-workman examined himself in this proceeding and stated that after being selected in an interview held by the Management he was appointed first as an Unskilled worker on daily wage of Rs. 10 in 1985. After he worked as an Unskilled worker for about a year, he was appointed against a regular post on a monthly basic salary of Rs. 410. On 27-10-87, however, his services were terminated without assigning any reason and even inspite of his request to know the reasons, the same were not disclosed to him. He also stated that a criminal case had been instituted against him on false allegations made by a Contractor of the I.R.E. Ltd. while he was working in the said company on daily wage basis but he was acquitted from the criminal charge. Being cross-examined, he stated that at the time he was given regular appointment he was given some forms to be filled up and submitted by him. He made over those forms to another person, named Benu Acharya for filling up the same. After the same were filled up he put his signature thereon and submitted the same to the Management. He stated that he did not know what were mentioned in the form. He also stated that by the time the forms were filled up he did not know that there was a criminal case pending against him.

No witness has been examined on behalf of the First Party-Management.

6. In this proceeding, on behalf of the second party-workman some documents have been filed and proved to show that he had been appointed first to work in the I.R.E. Ltd. as an Unskilled worker on daily wage basis and subsequently on 26-11-89 he was appointed as a regular worker on monthly scale of pay. The appointment letter Ext. 3 goes to show that on his appointment he was required to return the attached attestation form duly filled in, in triplicate, and

attested by any of the authorities indicated in the form. Ext. 4 is a notice issued by the Chief Project Manager of the I.R.E. Ltd. on 8th October, 1986 notifying that all employees in the regular pay scales will be deemed to have been confirmed in their respective posts effective from the date they have completed six months of service in the pay scales except in the case of employees whose probation has been specifically extended by issuing orders or there has been a break of service and further that individual confirmation orders will be issued separately. By Ext. 5 the Management sent the Provident Fund and Family Pension Fund forms to the second party-workman to be filled up by him, in triplicate and submitted to the Personnel Department by 10th December, 1986. Ext. 6 is the order of termination which was served on the second party-workman. It reads : "The services of Shri Narasingh Sahu, Unskilled Worker, Dry Mill are terminated with effect from 28-10-1987 A. N. Shri Sahu may collect his dues from Accounts Department."

This order of termination is termed by the First Party-Management as termination simplicitor, in as much as, there is no stigma passed against the workman in this order while the second party terms it as an order of termination for misconduct as disclosed by the First Party-Management in course of this proceeding. This contention on behalf of the workman is based on the plea of the Management that the termination of services of the workman was made because he furnished false informations in the attestation form at the time of his appointment.

7. Question is, if the termination of employment of an employee could be effected by issuing an innocuous order like the present one though the real reason for termination is the allegation of misconduct against the workman and if such termination could be held to be illegal on the ground that no opportunity was given to the concerned employee to explain away the allegation made against him which formed the basis of termination of his employment.

8. So far as the law on this point is concerned, I may refer to the decision of the Hon'ble High Court of Gujarat in the case of Govindbhai Kanabhai Meru, Petitioner V. N. K. Desai, Respondent reported in 1988 Lab. I.C. 505. In the aforesaid case the question of termination of service of a part-time Sweeper based on mere unsatisfactory work was considered and it was held that such an employee, before termination order was passed, should have been given opportunity of being heard and in the absence of such opportunity the same deserved to be quashed. In the aforesaid case while the order of termination of service was struck down on the ground of violation of the principles of natural justice in not giving the employee an opportunity of being heard and he was directed to be reinstated in service, payment of back wages was, however, refused on the ground that in the facts of that case ordering back wages would tantamount to putting premium on misconduct. In another case between Dr. Mrs. Sumati P. Shere, Appellant V. Union of India and others, Respondents, reported in A.I.R. 1989 Supreme Court 1431, the termination of service of an ad hoc employee for unsuitability came up for consideration. In the aforesaid case, the appellant appeared at an interview and was appointed on ad hoc basis against a substantive vacancy and from time to time orders were made continuing her services. Her performance, according to her appointing authority, was found unsatisfactory. She was, however, at no time informed about her deficiencies until she was served with the order of termination. In the situation their Lordships held—"We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability." Their Lordships also indicated in the aforesaid judgment that in such a case there may not be

a regular enquiry but it was necessary that before an employee is discontinued on ground of unsuitability it is proper and necessary that she/he should be told in advance that her/his work and performance were not up to the mark.

In this particular case, it appears from the pleadings and evidence that the real reason for terminating the services of the second party-workman was that he furnished wrong/false statement in the attestation form which he was required to produce on his appointment. No doubt, such allegation if proved would amount to serious misconduct. The principles of natural justice demanded that the second party-workman should have been asked to explain his conduct with regard to the aforesaid allegation but this was not done. It seems, no enquiry was held to his knowledge on the aforesaid matter. In the circumstance, the action of the Management in terminating the services of the second party-workman with effect from 28-10-87 can not be sustained as a legal and justifiable action and the same has to be quashed.

9. Coming to the question of relief, in this case the workman was examined as a witness on his behalf and stated that there was a criminal case against him on false allegations and he was acquitted. He stated that he did not know that there was a criminal case against him when the attestation form was submitted. He took the plea in this proceeding that he got the attestation form filled-in by one Benu Acharya and made over the same to the Management and further that he did not know the contents of the form. The attestation form was submitted by the workman to the Management on 2-12-86. The criminal charge against the workman u/s. 380/323 of the I.P.C. was laid on the alleged occurrence which took place on 26-7-84 as would appear from the copy of the Criminal Court Judgment Ext. 8 filed and exhibited in this case on behalf of the second party-workman. In the circumstance, it is difficult to accept the plea that by 2-12-86 the second party-workman did not know that he had been involved in a criminal case. No doubt, he was acquitted from the criminal charge by the judgment passed by the Criminal Court on 27-7-1988 but this fact is not relevant for the purpose of this case.

Under such circumstance, I think, there should be no order for payment of back wages to the second party-workman on his reinstatement.

10. On the aforesaid analysis, I would hold that the action of the First Party-Management in terminating the services of the second party-workman with effect from 28-10-87 is not justified. The second party-workman is entitled to reinstatement but without any back wages.

The reference is answered accordingly.

S. K. MISRA, Presiding Officer
[No. L-29012/14/88-D.III(B)]
S. VENUGOPALAN, Desk Officer

नई दिल्ली, 9 जनवरी, 1990

का. प्र. 214 :—उत्प्रवासी अधिनियम 1983 (1983 का 31) की धारा 5 द्वारा प्रश्न शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उत्प्रवासी संरक्षी कार्यालय, मद्रास में नियुक्त सहायक, श्री एर. देसिंगराजन के विरुद्ध 10 जनवरी, 1990 को उत्प्रवासी संरक्षी मद्रास के सभी कार्यों को करने के लिए प्राधिकृत करती है।

[सं. ए०-22012/1/90-उत्प्र०]

प्र दीप सिंह, अवर सचिव

New Delhi, the 9th January, 1990

S.O. 214.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri R. Desingrajan, Assistant in the office of Protector of Emigrants, Madras to perform all functions of Protector of Emigrants, Madras in the office of Protector of Emigrants, Madras on 10-1-89.

[No. A-22012/1/90-Emig.]
PRADEEP SINGH, Under Secy.

नई दिल्ली, 9 जनवरी, 1990

का. प्र. 215 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रवर्धन के संबंध में निम्नलिखित आदेशों के द्वारा, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 9th January, 1990

S.O. 215.—In pursuance of section 17 of the Industrial disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Indian Overseas Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU
MADRAS-104

Saturday, the 11th day of November 1989

PRESENT

hiru K. Natarajan, M.A., B.L.,

Industrial Tribunal

Industrial Dispute No. 88 of 1986

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Indian Overseas Bank, Madras-2)

BETWEEN

Shri D. Sundar Raj, S/o Shri Doraiswamy, No. 44/1,
Thukkallamman Koil Street, Ayyanavaram,
Madras-23.

AND

The General Manager, Indian Overseas Bank, 762,
Anna Salai, Madras-600002.

REFERENCE

Order No. L-12012/63/86-D.II(A), dated 16-12-86 of Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Ettikkan, Advocate appearing for the workman and of Thiru C. Vaidyanathan for Tvl. Row & Reddy and N.G.R. Prasad, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workman and the Management of Indian Overseas Bank, Madras-2 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India, in its Order No. 12012/63/86-D, II(A), dated 16-12-1986 of the Ministry of Labour for adjudication for the following issue :

"Whether the action of the Management of Indian Overseas Bank, Madras in dismissing from service the workman Shri D. Sunder Raj, Ex-Messenger with effect from 10-1-79 is justified ? If not, to what relief the said workman is entitled to ?

2. The claim petition averments are that the Petitioner entered service in the Respondent as messenger on 28-2-1973 and was made permanent and continued till 23-7-1978. On 23-7-78 while he was attending the work in dealing Cheque clearance, he was called by an old lady to fill up a form regarding the transaction of the Bank. At that time a Two Account Payee Cheques which have to be added for clearance, mistakenly kept in his uniform coat pocket and after duty he left for home. In the evening when he reached home, he found the mistake and informed the fact to the Manager and thereafter he returned the cheque next day morning. He surrendered the cheque on 24-7-78. Thereafter the Branch Manager issued suspension order. An enquiry was conducted and finally he was dismissed. The Petitioner has been victimised for his union activities since he is an active worker in the Union. Further there is no grave charges against the Petitioner except this case. The punishment is too excessive. The order of dismissal cannot be passed by a same person, who was also an Enquiry Officer. The Petitioner was having treatment for mental ailment in the hospital. The termination is unjust, improper and illegal. Hence the Petitioner may be reinstated with backwages, continuity of service and all other attendant benefits.

3. The Respondent in its counter states that the Petitioner was dismissed on 10-1-1979. He raised a issue only in 1985 and hence a claim cannot be countenanced. The Petitioner has had a very poor record of service and in spite of chances given, he failed to improve himself. His probation was extended and finally he was confirmed on 28-11-73 with a caution. While so he was charge-sheeted on 31-1-75 for his absence without leave and warned. Again on 22-1-75 a charge-sheet for absence from 1-2-75 and after enquiry a punishment of stoppage of increment was imposed for six months with effect from 28-2-1976, since there was no improvement in his work. On the other hand a sum of Rs. 120/- entrusted to him for purchasing stationery was not returned till 8-2-1976. He continued to absent himself without prior permission during the period 16-1-75 to 16-2-76 and an enquiry was held by an order dated 4-8-76 a punishment of stoppage of increment for two years was imposed. Whiles on 31-5-1978 he came to the Branch and took away two cash Credit Account Cheques. He was charge-sheeted on 24-7-78 and during enquiry he remained exparte. The Management after accepting the findings of the Enquiry Officer issued a Second show cause notice to the Petitioner for a personal hearing on 9-1-79 on which date he appeared and had nothing much to say. Hence the Disciplinary Authority by an order dated 10-1-79 dismissed him from service for having committed a misconduct punishable under para 17.5 (d)(f)(j) of the Bipartite Settlement. Ne appeal was filed by him. He issued a lawyer's notice on 21-5-1985. The Petitioner has committed serious act of misconduct. He was not an office bearer of the Union so as to contend there was victimisation. His previous record was full of blemish. The punishment of dismissal is not excessive. The Disciplinary Authority is the authority who has to give findings and impose punishments. Hence the order of dismissal has been issued by the competent authority. The Respondent does not admit that the petitioner is mentally ill. The Petitioner is not entitled to any relief.

4. Respondent in its additional counter states that in case the Tribunal comes to a conclusion that the Enquiry conducted by the Respondent is not fair and proper the Respondent may be given opportunity to establish the charges before this Tribunal by letting evidence.

5. The points for determination are: (1) Whether the action of the Management in dismissing the Petitioner from service with effect from 10-7-79 is justified? (2) To what relief?

6. Exs. W1 to W-6 and M-1 to M-25 were marked by consent. No oral evidence was adduced on either side.

7. POINT 1): The Respondent through filed various documents, Ex. M-3 to M-14 relating to earlier misconducts, for which charges were framed and the Petitioner was punished after holding enquiries, it is not necessary to refer those documents, since the substantial punishment of dis-

missal was not imposed towards the earlier misconducts. Hence we are concerned only with Ex. M-16 charge sheet 24-7-1978. It is seen from this document, the Petitioner has been charged for having unauthorisedly taken two cash credit account payee cheques for Rs. 2000/- and also availed leave without permission inspite of caution made on several occasions. Thus it is seen the main charge in the issue relates to the Petitioner having taken two cash credit account payee cheques intending for clearance unauthorisedly. It is seen from Ex. M-15 Explanation dated 2-6-78, the Petitioner has referred to taking away of the cheque on 31-5-78 and subsequently he surrendered the same to the Manager and prays to be excused for the mistake. Anyway an enquiry was conducted under Ex. M-17 proceedings. A look at Ex. M-17 proceedings reveals that the Petitioner has not taken part in the proceedings. The Enquiry was proceeded in his absence by examining one Subramanian. On the basis of his evidence, the Enquiry Officer gave a finding under Ex. M-18 holding the Petitioner guilty of charges. Subsequently after issuing second show cause notice and after conducting personal hearing, he was dismissed from service under Ex. M-21 order dated 10-1-79.

8. Now the learned counsel for the Petitioner would vehemently contend that the Petitioner has actually not misused the cheque and therefore there is no loss to the Respondent-Bank. Further according to him, the Petitioner surrendered the cheque the very next day itself. In short, it is the contention that by taking away the cheque without permission and not misusing it, it cannot be said he committed a misconduct warranting dismissal from service. In this connection, he referred to Ex. M-15 letter dated 2-6-78 addressed to the Branch Manager admitting the mistake and surrendering the two cheques and praying to be excused. Thereafter a charge-sheet has been issued against the Petitioner on 24-7-78. In this connection, the learned counsel for the Respondent would urge by looking into the past conduct of the Petitioner covered by Ex. M-9 and M-14 Order of punishments and the absence of improvement in his conduct consistently, the punishment now imposed on the Petitioner is justified in the circumstances. In other words it cannot be contended the punishment is disproportionate to the misconduct committed by the Petitioner. On the other hand, the learned counsel for the Petitioner now produced Ex. W-4 to W-6 Medical Certificates for the period 1974, 1975 and 1983 that he was under treatment. Of course these are of no relevance at this stage, since why he has not produced those documents before the Enquiry Officer or at any stage earlier. Anyway the Petitioner having remained exparte during the enquiry. He cannot attack the enquiry now unless it is shown the Enquiry Officer has not come to a conclusion on the materials placed before him. In this connection the Enquiry Officer under Ex. M-17 has given his finding on the basis of the witness examined on behalf of the Management. Therefore the finding of the Enquiry Officer is not perverse.

9. It is next contended by the learned counsel for the Petitioner that in this case the Enquiry Authority and the Punishing authority being the same person, the order of dismissal passed under Ex. M-21 is not valid. On the other hand it is pointed out by the learned counsel for the Respondent that under 17.14 of the Bipartite Settlement "any Officer of the Bank not lower than the rank of the Assistant General Manager shall decide which officer(s) shall be empowered to hold enquiry and take disciplinary action in the case of each office." The names of such officers or the body who are empowered to pass the original orders of hear and dispose of the appeal shall from time to time be published on the Bank's notice boards. Only on the basis of this Bipartite Settlement according to the learned counsel for the Respondent, notices were put up in the notice board under Ex. M-22 to M-24 for the year 1973-74 and 75 empowering the officers mentioned therein to hold enquiries and take disciplinary action. Ex. M-25 is also a similar notice dated 14-12-78 empowering the officers to hold an enquiry and take disciplinary action. It is seen from those notifications that A. Solaiyan, Enquiry Officer of the case was one of the Officers empowered to hold enquiries and take disciplinary action. Therefore it can not be contended that the Enquiry Officer and Punishing Authority being the same, the order of dismissal passed under Ex. M-21 is not valid.

10. The learned counsel for the Petitioner finally contended that this is a fit case where the Tribunal can invoke Section 11-A of the Industrial Disputes Act, 1947. It is the plea of the Petitioner's counsel that in as much as the cheque having been returned voluntarily and not misused, consequently not leading to loss for the Bank, the punishment of dismissal is not justified. In this connection, he straightaway drew my attention on to a decision reported in 1981—1—L.L.J. page 57 (Madura Coats Ltd. V. Labour Court). In that case the workman was dismissed from service after enquiry, for his absents from duty, disregarding the instructions of the Management and participating the dharna against the Management. The Labour Court upheld the misconduct of the workman and ordered reinstatement without backwages. The Management challenged the award by filing a Writ Petition. The High Court after considering the various decisions of Section 11-A held as follows :

“Whether it is a day's absence or defiance of the instructions of management, it is not such a serious misconduct as to deserve the punishment of dismissal. It is true that even a single act of indiscipline or misconduct would be enough or would entail the serious punishment. But there cannot be any axiomatic rule in this regard.”

11. In 1982—1—LLJ page 159 (Sri Ganesh Aluminium Factory v. Industrial Tribunal, Madras and another) the Bench of our Madras High Court examined in detail the scope of Section 11-A of the Industrial Disputes Act. In that case the workers Union objected to the company to re-employ two superannuated employees. When the re-employed workers returned for work Gopalan and two others created a serious situation by behaving in a disorderly and riotous manner. Charges were framed against the concerned three workmen including Gopalan and in the domestic enquiry they were held guilty of charges of riotous and disorderly behaviour and accordingly they were dismissed from service. Then the matter was referred to the Tribunal. The Tribunal reinstated them without backwages by invoking Section 11-A of the Industrial Disputes Act. This decision was challenged. The Bench of our Madras High Court dismissed the Writ Appeal and held that—

“Whether punishment that could be awarded under the latter part of Section 11-A could be made by the Tribunal. The re-instatement of such terms and conditions, if any, as it thinks fit is one of the punishments which are specifically referred to in Section 11-A and therefore the Tribunal was within the jurisdiction in ordering the re-instatement without backwages but with continuity of service.”

Thus it is seen from this decision law has been unambiguously laid down that this Tribunal has wide jurisdiction to interfere with the punishment imposed on the worker. It is further seen from the above decision, it refers to a Supreme Court decision reported in 1973—1—L.L.J. page 278 (Workmen of Firestone Tyre & Rubber Co. V. Management) wherein while considering the scope of Section 11-A of the Industrial Disputes Act, the Supreme Court held that—

“The Tribunal had the liberty to consider not only whether the finding of misconduct as recorded by the Management is correct but also differ from such a finding if proper case is made out. If ultimately the Tribunal comes to the conclusion that the misconduct is proved, all the same it could interfere with the punishment if the punishment was considered to be not justified even on the finding of misconduct.”

Therefore in the light of the above decisions it remains to be seen whether this Tribunal can interfere with the punishments under Section 11-A of the I. D. Act. It may be the learned counsel for the Respondent pointed out, that the Petitioner has been terminated from service in 1979 and therefore slept over the matter and initiated action only in 1985 by giving a lawyer's notice. In other words it is not open to this Tribunal to re-open the matter at this stage.

I am unable to accept this contention. Of course, there is delay on the part of the Petitioner. However considering the misconduct committed by the Petitioner namely taking away the two cheques unauthorisedly would not amount such a grave misconduct warranting dismissal. It is significant to note the very next day he has surrendered the cheques as can be seen from Ex. M-15. It is also not shown by reason of taking away the cheques the Respondent incurred any loss or caused any inconvenience to the customers. In the absence of the same it is not justified on the part of the Respondent to impose grave punishment of dismissal by simply conceding that the past record was belemish. It may be true, but it is relevant to note that the second show cause notice under Ex. M-20 has not referred to the past conduct. It only refers to the charges are very serious in nature and appropriate punishment for the same is dismissal. The overall circumstances leading to dismissal of the Petitioner in this case would only show that the order of dismissal is not justified.

12. Now coming to the question whether the complainant can be reinstated with all benefits, it is a fit case where the complainant should not be reinstated without imposing lesser punishment. He will be reinstated without backwages but with all benefits except stoppage of two increments falling due to the date of termination of services without cumulative effect. For these reasons this point is found accordingly.

13. POINT (2). In the result, the Respondent is directed to reinstate the Petitioner—D. Sundar Raj, without backwages but with all benefits except stoppage of two increments falling due to the date of termination of services without cumulative effect. An award is passed accordingly. No costs.

Dated, this the 11th day of November, 1989.

[No. L-12012/63/86-D.II(A)]

K. NATARAJAN, Industrial Tribunal.

WITNESSES EXAMINED

For Both sides : None.

DOCUMENT MARKED

For Workman :

Ex. W-1/21-5-85—Advocate's Notice from Thiru P. Sundar Raj to the Management (Xerox copy).

W-2/10-12-85—Statement filed by the Management before the Conciliation Officer (Xerox copy).

W-3/13-2-86—Conciliation Failure Report (Xerox copy):

W-4/3-5-79—Medical Certificate issued to Thiru D. Sundar Raj, by Civil Assistant Surgeon, Institute of Medical Health, Madras—10.

W-5/3-1-84— —do—

W-6/3-1-85— —do—

For Management :

Ex. M-1/16-2-73—Appointment order issued to Thiru D. Sundar Raj (Xerox copy).

M-2/2-7-73—Confidential report of Thiru D. Sundar Raj (Xerox copy).

M-3/28-7-83—Letter from Management—Bank to Thiru D. Sundar Raj (Xerox copy).

M-4/28-7-83—Letter from Thiru D. Sundar Raj to the Management Bank (Xerox copy).

M-5/28-4-75—Warning letter issued to Thiru D. Sundar Raj (Xerox copy).

M-6/22-7-75—Charge Sheet issued —do—

M-7/23-10-75—Enquiry Proceedings and findings of the Enquiry Officer (Xerox copy).

M-8/8-12-75—Show cause hearing in respect of charge sheet on Thiru D. Sundar Raj (Xerox copy).

M-9/11-12-75—Order of punishment issued to Thiru D. Sundar Raj (Xerox copy).

M-10/29-1-76—Letter from Thiru D. Sundar Raj to the Management Bank (Xerox copy).

Ex. M-11/13-2-76—Suspension Order (Xerox copy).

M-12/21-5-76—Chargesheet issued to Thiru D. Sundar Raj (Xerox copy).

M-13/23-7-76—Show cause notice issued to Thiru D. Sundar Raj (Xerox copy).

M-14/4-8-76—Order of punishment issued to -do-

M-15/2-6-78—Letter from Thiru D. Sundar Raj to the Management Bank (Xerox copy).

M-16/24-7-78—Charge-sheet issued to Thiru D. Sundar Raj (Xerox copy).

M-17/6-11-78—Proceedings of the Enquiry Officer (Xerox copy).

M-18/6-11-78—Findings of the Enquiry Officer (Xerox copy).

M-19/23-11-78—Letter from Enquiry Officer to Thiru D. Sundar Raj (Xerox copy).

M-20/26-12-78—Show Cause Notice issued -do- (Xerox copy).

M-21/10-1-79—Dismissal Order (Xerox copy).

M-22/10-12-73—Notice under para 17.14 of the Settlement entered into between the Management—Bank and its workmen (Xerox copy).

M-23/28-8-74—Notice under para 17.14 of the settlement dated 14-12-1966 between Management Bank and their workmen (Xerox copy).

M-24/28-8-74—Notice under para 17.14 of the settlement between Management—Bank and their workmen (Xerox copy).

M-25/14-12-78— -do-

K. NATARAJAN, Industrial Tribunal.

का. आ. 216—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन में संलग्न निर्योक्तों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास [के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 216.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Govt.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS-104.

Friday, the 17th day of November, 1989

PRESENT :

THIRU K. NATARAJAN, M. A., B. L.,
Industrial Tribunal.

Industrial Dispute No. 28 of 1988

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947

between the workmen and the Management of Indian Bank, Madras).

Between the workmen,
Represented by
The General Secretary,
Indian Bank Employees Union,
25, Second Line Beach,
Madras-600001.

AND

The Divisional General Manager,
Indian Bank Zonal Office,
Spencer Tower V Floor,
770, Anna Malai,
Madras-600002.

REFERENCE :

Order No. I-12012/520/87-D. II(A), dated 20-4-88 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru R. Viduthalai, Advocate appearing for the workman and of Thiru R. Arumugam for Tvl. Aiyar & Dolia and R. Arumugam, Advocates appearing for the Management and this dispute having stood over till this day for consideration the Tribunal made the following.

AWARD

This dispute between the workman and the Management of Indian Bank, Madras-2 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in the Order No. I-12012/520/87-D II(A), dt. 20-4-88 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Indian Bank in respect of the Branch Manager, Chinglepet, Tamilnadu in removing the name of Shri T. Arul doos from the panel of temporary peon with effect from 8-7-87 and denying him further employment is justified ? If not to what relief is the workman entitled ?"

2. The claim petition averments are that the Petitioner was employed as a peon in the Respondent-Bank from 1-9-1979 and was engaged as a temporary peon in the leave vacancies during the period from 1-9-1979 to 22-5-1985. The engagement and empanelment of temporary peons in the Respondent Bank is done by calling for names of eligible candidates from the Employment Exchange. While so on 27-6-85, the Manager of Chinglepet Branch issued a shown cause notice to the employee alleging certain acts of commission and omission that took place in 1984 and asking the employee to show cause as to why the employee should not be removed from the panel of temporary peons. After receiving the explanation on 28-6-85 the Respondent-Bank removed him from the panel of temporary peons on 8-7-85. No enquiry was conducted prior to removal. The disengagement of the Petitioner without conducting enquiry while retaining others who were empanelled subsequent to the Petitioner is colourable exercise of power of the Respondent. The removal of the name of the Petitioner from the panel is punitive in character since there is a 'live nexus' between the alleged misconduct and the order of removal. The employees whether permanent or temporary are governed by Shastri and Desai Awards. The order of disengagement and removal from the panel of temporary peons had been passed by the Branch Manager, who neither has the power or authority to do so. Hence the claim for reinstating him in service with all benefits.

3. The Respondent in its counter states that the Petitioner is a habitual alcoholic and found attending office after consuming liquor on more than one occasion. He was also irregular in attending the work and irregular in calling on the branch for being engaged whenever the permanent sub-staff goes on leave. On 14-3-84 at about 9.45 p.m. he went to the residence of the then acting Branch Manager, Chinglepet abused and threatened the Manager's wife in his absence in the drunken state. On the very day he abused the Manager at about 10 p.m. when he returned to his house. After investigation of the Regional Office, Kanchipuram and giving a show cause notice, the Petitioner was removed from the Panel. The employees, such as petitioner, are not covered by the Bi-partite settlement and hence there is no need for a full-fledged enquiry to be conducted before disengaging the temporary employee. There is no 'live nexus' between the proved misconduct and the order of punishment. The Petitioner behaved in a disorderly manner under drunken condition and hence he was removed from the panel. The Petitioner is not governed either by the Shastri or Desai Award or by the Bi-partite settlements. He was removed only for the proved misconduct after investigation. It is not correct to state that he was removed from the panel by the order of Branch Manager but only on the instructions of the Regional Manager, Kanchipuram. If the Tribunal comes to a conclusion that the removal from the Panel. The employees, such as petitioner, was give an opportunity to prove its case by letting evidence. There is no merit in the case the Petitioner. Hence the claim is to be rejected.

4. The points for determination are :

- (1) whether the action of the Management in removing the name of the Petitioner from the panel of temporary peon is justified ?
- (2) To what relief ?

5. Exs. W-1 to W-5 and M-1 to M-8 were marked on the side of the Petitioner and Management respectively. No oral evidence was adduced on either side.

6. POINT (1).—The Petitioner admittedly was appointed as a temporary sub-staff in the leave vacancies. If is not in dispute that his initial appointment was made on sponsoring from the Employment Exchange. As per Ex. M-8 the particulars of days of work in the Branch by the Petitioner, it is seen he joined as early as 1979 and was working till the date of disengagement namely 8-7-85 intermittently. While so it is the case of the Petitioner that he was terminated to his surprise. However, the case of the Respondent is that on receipt of complaint from the Branch Manager dated 7-4-84 under Ex. M-1 that the Petitioner under alcoholic addict attends the office after consuming liquor and irregular in calling on to the office and that on 24-3-84 at about 9.45 p.m. he came to the residence of the Branch Manager in drunken mood and abused his wife. On the basis of this complaint a report was called for and submitted to the Regional Manager, Kanchipuram under Ex. M-2. Of course, the report is against the Petitioner. Thereupon the Deputy General Manager of the Respondent-Bank addressed a letter to the Zonal Manager, laying down the procedure for dropping persons from the panel of temporary sub-staff under Ex. M-3. This letter suggests that in the case of employees of fraud/misbehaviour/long absence, after getting the explanation within a week time as to why he should not be dropped from the panel, and the explanation was not satisfactory or no explanation received he may be given a letter stating he is being dropped from the panel for the reasons of fraud/misbehaviour/long absence as the case may be and he will not be further engaged in the leave vacancies. If he worked for 240 days continuously in a period of 12 months, he has to be paid notice period salary and retrenchment compensation as per the I.D. Act. In this letter the Manager asked the subordinates to follow the procedure meticulously. Again it is seen under Ex. M-4, Confidential letter dated 29-5-1985 by way of reply to Ex. M-1, the Chief Officer suggested to disengage the Petitioner by following the guidelines given by him in

his letter itself. Subsequently on 27-6-86 the Branch Manager, Chinglepet sent a memo to the Petitioner asking him as to why his name should not be removed from the panel of temporary employees for the alleged misconduct, and called for an explanation within seven days failing which the matter will be proceeded further. In pursuance of memo W-1 the Petitioner sent an explanation under Ex. W-2 denying the charges and requesting the authorities of the Management to include his name in the temporary final and help him. Any way his request was not considered and he was removed under Ex. W-3 order dated 8-7-85 removing from the panel of temporary peons with effect from that date and he will not be engaged in the leave vacancies of permanent sub-staff.

7. In this connection, the learned counsel for the Petitioner would vehemently contend that the Petitioner has been engaged nearly for six years and thereafter over night he has been terminated on the ground of drunken behaviour and threatening the manager without conducting any enquiry. In other words, he would urge that the enquiry ought to have been conducted before disengaging him. He would point out an explanation having been asked for and given by the Petitioner under Ex. W-2 he ought not to have been dismissed without holding the domestic enquiry. But the contention of the learned counsel for the Respondent is that he being a temporary peon, it is not obligatory on the part of the Management to hold a domestic enquiry. It is also his plea that on the complaint received from the Branch Manager under Ex. M-1 and after detailed investigation, he was removed from the panel.

8. The learned counsel for the Petitioner would contend even assuming no enquiry was contemplated as per the Bi-partite settlements or any other award, the Respondent ought to have followed Section 25-G and 25-H of the Industrial Disputes Act before disengaging the Petitioner irrespective of the fact that he worked for 120 days continuously. In other words Section 25-G and 25-H of the I.D. Act do not contemplate the actual number days worked by the employee. Section 25-G lays the procedure for retrenchment namely 'the employer shall ordinarily retrench the workman who was the last person to be employed in that category unless for reasons to be recorded.' Section 25-H says,

"Whether any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such a manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons."

In this case, the Respondent has failed to comply with the provisions and therefore his disengagement is not valid. Of course, the Respondent would contend that the temporary worker and he is not terminated but is only disengaged and therefore these provisions are not attracted. I am unable to agree with this contention, since for all purposes the Petitioner has been removed from the panel whatever manner they may be called whether disengagement, termination or removal. It is only an ingenious plea for having terminated the services of the Petitioner. It is relevant to note as contended by the learned counsel for the Petitioner that the Respondent has not taken into consideration while disengaging the services of the Petitioner the provisions of Section 25-G and 25-H which are mandatory before disengaging him. The Petitioner ought to have been disengaged as per priority namely "last come, first go". At this stage it is not the case of the Respondent that subsequent to the Petitioner's disengagement, no other persons were appointed. Therefore, the Petitioner had made out a case that he has been disengaged without complying the Provisions of the Industrial Disputes Act. For all these reasons, this point is found in favour of the Petitioner.

9. POINT (2).—In the result, the Respondent is directed to include the name of the Petitioner in the panel of temporary peons for future permanent vacancies within one month from the date of publication of this award in the gazette. No costs.

Dated, this the 17th day of November, 1989.

K. NATARAJAN, Industrial Tribunal.

[No. L-12012/520/87-D.II(A)]

WITNESSES EXAMINED

For both sides.—None.

DOCUMENTS MARKED

For workman :

- Ex. W-1/27-6-85—Memo issued by the Management-Bank to Thiru T. Aruldoss (Xerox copy).
- Ex. W-/27-6-85—Explanation by Thiru T. Aruldoss to Ex. W-1 (Xerox copy).
- Ex. W-3/8-7-85—Letter from Management-Bank to Thiru T. Aruldoss removing him from service (Xerox copy).
- Ex. 4/29-4-86—Requisition letter from Thiru T. Aruldoss to the management-Bank by allowing him to work in the leave vacancies (Xerox copy).
- Ex. W-5/5-2-87—Letter from Petitioner-Union to the Assistant Labour Commissioner (Central), Madras-8 (Xerox copy).

For Management :

- Ex. M-1/7-4-84—Complaint given by Manager of the Management-Bank against Thiru T. Aruldoss (Xerox copy).
- Ex. M-2/11-2-85—Xerox copy of the report submitted by Deputy Chief Officer against Thiru T. Aruldoss.
- Ex. 3/25-4-85—Letter from Deputy General Manager to the Zonal Manager, Madras (Xerox copy).
- Ex. M-4/29-5-85—Letter from Chief Officer to Zonal Office (Xerox copy).
- Ex. M-5/2-6-87—Letter from Deputy General Manager of the Management-Bank to the Assistant Commissioner of Labour (Central), Madras (Xerox copy).
- Ex. M-6/24-8-87—Conciliation Failure Report (Xerox copy).
- Ex. M-7/7-9-88—Note put up by Regional Office, Kanchipuram of the Management-Bank showing details of work engaged to Thiru T. Aruldoss (Xerox copy).
- Ex. M-8/7-9-88—Statement showing particulars of the days worked in the bank by Thiru T. Aruldoss and two others (Xerox copy).

K. NATARAJAN, Industrial Tribunal

नई दिल्ली, 10 जनवरी, 1990

का. मा. 217:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, प्रमुख में औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

94 GI/96—6

New Delhi, the 10th January, 1990

S.O. 217.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT

HYDERABAD

PRESENT :

Sri C. Rami Reddy, B.Sc., B.L., Industrial Tribunal.

Dated : 20th day of November, 1989

(20-11-1989)

Industrial Dispute No. 86 of 1988

BETWEEN

The Workmen of Syndicate Bank, Zonal Office, Labbipet, Vijayawada-520010.

AND

The Management of Syndicate Bank, Zonal Office, Labbipet, Vijayawada-520010.

APPEARANCES :

Sarvasri M. S. N. Rao and V. Durga Prasad, General Secretary and Joint Secretary of Syndicate Bank Staff Union, respectively—for the workmen.

Sri S. Manoharan, Asstt. Personnel Manager, Industrial Relations cum Syndicate Bank Zonal Office, Pioneer House, Hyderabad—for the Management.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/249/88-D.II(A) dated 26th August, 1988 referred the following dispute under Sections 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the employer in relation to the management of Syndicate Bank and their workman to this Tribunal for adjudication :

"Whether the action of the Management of Syndicate Bank in dismissing from service Sri D. Vijaya Rao is justified. If not, to what relief is the workman entitled?"

This reference is registered as Industrial Dispute No. 86 of 1988 and notices were issued to the parties.

2 The facts briefly are as follows :—The workman Sri G. Vijaya Rao was working as Cashier in Gundur Branch of Syndicate Bank during the period from 30-9-1981 to 16-11-1981. He was issued a charge sheet dated 17-2-1982 (Ex. M2) alleging the following :—

"1. that on 30-9-1981 Mr. Jani Basha remitted a sum of Rs. 200.00 towards his PSL A/c No. 23/81. On the said date you were performing the duties of the Cashier at the Branch. As such, the said amount of Rs. 200.00 was paid to you along with voucher in CG 73 ps for the like amount. In respect of the amount of Rs. 200.00 received by you, you issued under your signature counter foil of CG 73 ps.

Further for the cash remittance made by the said Mr. S. K. Jani Basha, you did not make entries in the Cashier's scroll book maintained by you for the day in question. Thereafter, with an intention to

misappropriate the amount of Rs. 200.00 so received by you, you destroyed/caused to be destroyed the voucher relating to the said remittance.

- II. That on 12-10-1981 you were performing the duties of the Cashier and that on the said date, Sri G. S. Rao who had availed loan from the Branch under PSL 18/81 remitted a sum of Rs. 100.00 towards the instalment of his above loan a/c.

He approached you with a pay-in-slip in CG 73 ps. and handed over to you a sum of Rs. 100.00 along with the said pay-in-slip. You received the amount and the pay-in-slip tendered by him and in token for having received the cash, you affixed "Received cash" rubber stamp impression on the counter foil of the slip and signed in the counter-foil at the place meant for the cashier's signature in the capacity of the Cashier of the branch. You also obtained the signature of the supervisor/officer who was writing the scroll at the relevant period in a mode and manner best known to you. You, thereafter, delivered the said counterfoil to the said Sri G. S. Rao.

That in respect of the above remittance of Rs. 100.00 made by Sri G. S. Rao and received by you in the capacity of Cashier of the Branch, you did not make any entries in the Cashier's scroll book maintained by you. Thereafter, with an intent to misappropriate the said amount you destroyed/caused to be destroyed the voucher relating to the said remittance. In fact, the amount remitted by the said Sri G. S. Rao has not been credited towards PSL a/c. No. 18/81 on 12-10-1981.

- III. That on 12-10-1981, while you were performing the duties of the Cashier at the Branch, Sri G. V. Subbaiah who had availed loan from the Branch under REL 183/80 remitted a sum of Rs. 300.00 towards the instalment of his above loan a/c.

You then received the amount and the pay-in-slip in OG 73 ps tendered by him and affixed "Received Cash" rubber stamp impression on the counter foil of the slip and signed on the counter foil as place meant for Cashier signature in the capacity of the cashier at the Branch.

That in respect of the amount of Rs. 300.00 paid by Sri G. S. Rao and received by you in the capacity of the Cashier of the Branch, you did not make any entries in the Cashier's scroll book maintained by you. Thereafter, with an intent to misappropriate the said amount, you destroyed/caused to be destroyed the voucher relating to the said remittance. In fact the amount remitted by the said Sri G. V. Subbaiah has not been credited towards PL 183/80 on 12-10-1981.

- IV. That on 15-10-1981, while you were working as Cashier at the Branch, Smt. Ratnamma who had availed a Jewel loan from the Branch under JL a/c. No. 674/81 visited the Branch to credit a sum of Rs. 150.00 towards loan A/c.

She approached you with a pay-in-slip in CG 73 ps. prepared by the Manager of the Branch and handed over to you a sum of Rs. 150.00 along with the said pay-in-slip. You received the amount and the pay-in-slip tendered by her and in token for having received the amount, you affixed "Received Cash" rubber stamp impression on the counter file of the slip and signed the said counter foil at the place meant for the Cashier's signature in the capacity of the Cashier of the Branch. You, thereafter, delivered the said counter-foil to the said Smt. Ratnamma.

That in respect of the above remittance of Rs. 150.00 made by Smt. Ratnamma and received by you in

the capacity of Cashier of the Branch, you did not make any entry in the Cashier's scroll book maintained by you. Thereafter, with an intent to misappropriate the said amount, you destroyed/caused to be destroyed the voucher relating to the said remittance. In fact the amount remitted by the said Smt. Ratnamma has not been credited towards her jewel loan a/c on 15-10-1981.

That thereafter on 12-11-1981 the Borrower called on the Branch to close her Jewel Loan a/c. It was then noticed that a sum of Rs. 150.00 paid by her on 15-10-81 towards the JL account was not accounted for in her JL A/c. She also produced the counter-foil issued to her by you in respect of the remittance made by her on 15-10-1981. The said counter foil bears your signature for having received a sum of Rs. 150.00 towards her JL a/c.

74/81 on 15-10-1981. As the said amount paid in by the said customer has not been credited towards her Jewel Loan a/c, the matter was referred to you for clarification etc. In response you agreed having received the amount of Rs. 150.00 from Smt. Ratnamma towards her JL A/c. 74/81 on 15-10-81. You then submitted a letter dt. 16-11-1982 addressed to the Manager admitting the acts of misappropriation of moneys in the said a/c. referred to above.

In the said letter you also admitted the misappropriation of moneys in respect of other 3 accounts mentioned under Item No. I to III referred above. You also reimbursed the said Rs. 150.00 on 15-11-1981.

The above circumstances lead us to alleged against you as under :

- That with a fraudulent and dishonest intention, you destroyed/caused to be destroyed the vouchers dt. 30-9-1981, 12-10-1981 and 15-10-1981 for Rs. 200.00, Rs. 100.00, Rs. 300.00 and 1500.00 relating to PSL 23/81 PSL 18/81, RFL 183/80 and JL 74/81 respectively.
- That in furtherance of such fraudulent and dishonest intention, you misappropriated the moneys belonging to Mr. S. K. Jani Basha, Sri G. S. Rao, Sri C. V. Subbaiah and Smt. Ratnamma customers of the Branch.

By your above acts, you have committed an act of gross misconduct as per the provisions of Bipartite Settlement by which you are governed.

We, therefore, charge you with gross misconduct of "doing acts prejudicial to the interest of the Bank" vide Clause 19.5(j) of the Bipartite Settlement of October, 1966."

The Petitioner-Workman furnished his explanation dated 21-1-1983 marked as Ex. M3. One Sri B. P. Acharya, Officer, Syndicate Bank (M.W1) was appointed as Enquiry Officer to conduct enquiry and to submit his report. He conducted the enquiry on 9-4-1983 and prepared the enquiry proceedings Ex. M15 and the submitted his enquiry report dt. 28-5-1983 (Ex. M16) holding the workman guilty of the charges against him.

3. The workman put forth several grounds in the claim statement. The first ground is that the domestic enquiry conducted by the Enquiry Officer is vitiated. He raised various contentions in this regard in the claims statement. This Tribunal took up the validity of the domestic enquiry as a preliminary issue as per the order in M. P. No. 34/89 and this Tribunal passed the order on 25-9-1989, holding that the admission of guilt made by the workman before the Enquiry Officer is voluntary and that the domestic enquiry conducted by the Enquiry Officer is fair and proper. In the light of the said finding, it is unnecessary again to go into the aspect whether the admission made by the workman is voluntary or not.

4. The other contentions raised by the workman in the claim statement are as follows :

The disciplinary authority which is as a quasi-judicial authority did not go into any facts or circumstances of the case pending against the workman, that the Disciplinary Authority chose to rely upon the lopsided findings of the Enquiry Officer who is turn had relied upon the admission made by the workman, that the Disciplinary Authority therefore failed in his lawful duties as quasi-judicial authority to evaluate the evidence placed before him to arrive at fair and equitable decision. The order of the Disciplinary Authority is not a speaking order. Against the order of dismissal dt. 9-11-1983 the workman filed an appeal to the Appellate Authority. A hearing as required under the Rules given to the workman, on 10-1-1984. The Appellate Authority passed an order dt. 3-3-1984 rejecting the appeal and confirming the punishment of dismissal awarded by the Disciplinary Authority. The Appellate Authority also mechanically relied upon the reasoning of the Enquiry Officer and also of the Disciplinary Authority and there was total lack of application of mind on the part of the Disciplinary Authority. In the instant case the workman made a confession under strained circumstances. The Manager advised the workman that reimbursing the money and an admission of guilt would lead to a lenient view by the matter by the Management whereby he may be able to avoid disciplinary proceedings by the Bank against him. The Management is also guilty of violation of the rules governing the disciplinary matters of workman employees in the Banking industry. The date of the appeal of the workman was 29th December, 1983. Hearing of the appeal concluded on 10th January 1984. Therefore the Appellate Authority was bound to dispose of the appeal and pass orders on or before 9th February, 1984 i.e. at the end of the one month period from the date of the conclusion of the hearing as per the para 19.14 of Bipartite agreement. In the instant case the appeal was disposed of by the Appellate Authority on 3rd March, 1984 i.e. 23 days after the expiry of the mandatory period. It is therefore very clear that the Appellate Authority's order is manifestly illegal and in violation of the provisions of the Bipartite Settlement. The Appellate Authority had become "Functus Officio" as of the end of the day on 9th February, 1984. The appeal of the concerned workman is deemed to have been allowed in the positive. Assuming that the admission of the workman was voluntary and not under duress, it is the submission of the workman that the punishment imposed is harsh, excessive and is unconscionable. In the case of Delhi Mills Supply Corporation v. Jain, the Supreme Court directed the reinstatement of the employee with full back wages and allowances etc., despite the fact that the employee Sri Jain had admitted to the charge of temporary misappropriation and had in fact been found guilty and had been convicted by the criminal court and released under probation of Offenders Act. The order of dismissal and also the confirmation of the order of dismissal and also of the Appellate Authority confirming the order of Dismissal were very much prior to the judgement of the Supreme Court case. The Appellate Authority could have come to a different conclusion and could have imposed a lesser punishment, had the matter been decided subsequent to the judgement of the Supreme Court. Hence it is prayed that the Hon'ble Tribunal may be pleased to quash the order of dismissal dated 9th November, 1983 and the Appellate Authority order dated 3rd March, 1984 and to reinstate the workman with retrospective effect with full back wages and allowances etc.

5. The Management filed a reply statement contending as follows: The Disciplinary Authority in due consideration of the documents placed before him including the proceedings of the enquiry findings of the Enquiry Officer and letter of confession given by the workman on two occasions, considering the seriousness of the misconduct committed by the workman proposed a punishment of "Dismissal" and informed the same to the workman vide his reference No. 1563/306(3)/JRC dated 2nd September, 1983. A purposeful Personal Hearing was thereafter given to the workman by the Disciplinary Authority on 13th May, 1983, where again the workman admitted in clear terms, his guilt and reiterated his stand expressed in his earlier letters submitted to the Bank. Except this, no extenuating circumstances were highlighted by the workman during the course of the personal hearing and

the Disciplinary Authority was therefore left with no other alternative but to confirm the punishment of 'dismissal' proposed by him in his earlier reference and this was informed to the workman vide his Proceedings No. PRS/DGM/HYD/83/43, dated 9th November, 1983. The averments of the workman are therefore highly illogical and hairsplitting attempt has been made by them to read in between the lines.

6. A perusal of the Proceedings of the Disciplinary Authority clearly reveals that his action in having awarded the said punishment is in accordance with the provisions of the Bipartite settlement and the same cannot be construed as otherwise as he has passed the said order in due application of his mind. The attempt of the workman based on surmise is therefore erroneous.

7. Aggrieved by the orders of the Disciplinary Authority the workman preferred an appeal vide his letter dated 29th December, 1983. In the said appeal he failed to adduce any new grounds warranting reconsideration of the decision of the Disciplinary Authority. A personal hearing was also given in terms of Para 19.14 of the Bipartite Settlement on 10th January, 1984. Instead of giving any grounds enabling the Appellate Authority to dilute the orders of the Disciplinary Authority, the workman admitted before the Appellate Authority that the said fraudulent acts were committed by him as he had some financial problems during the material period and the amount so taken by him had been duly reimbursed. The workman therefore pleaded for mercy. The Appellate Authority in the absence of any grounds worthy of reconsideration, confirmed the orders of the Disciplinary Authority in his proceedings No. 9/PD: IRS/DA-7 dated 3rd March, 1984. The averments have been therefore made by the workman to distort the actual version and to derive undue benefit out of such meaningless and illogical distortion of the facts.

8. The appeal was preferred by the workman on 29th December, 1983 and after giving a personal hearing in accordance with the provisions of the Bipartite Settlement the same was disposed off by the Appellate Authority on 10th January, 1984. Therefore the said action does not suffer from any infirmity as alleged by the first party. Even assuming without admitting that there is a delay in disposing off the appeal, the same cannot be taken as a breach by the workman as a careful reading of the relevant provisions of the Bipartite Settlement would show that the purpose and object of the said provisions never intended any such either automatic disposal or deemed consideration as contended by the workman. If it were the object of the Bipartite Settlement, the same would have definitely provided for the penal provision for not disposing off the said appeal within a stipulated time. The absence of any such negative stipulation or the penal provisions clearly shows that the said stipulation as to the time limit for the disposal of the appeal is only directly and not mandatory. The contentions are therefore made without any basis.

9. As regards the contention of the workmen, in regard to the quantum of punishment, it is submitted that the guiding principal for awarding punishment as set out by the Hon'ble Supreme Court, is not applicable to the facts of the case on hand. In so far as the instant case is concerned, the disputant abused his official position and shattered the confidence of the management vested on him by misappropriating the monies belonging to the bank. Keeping of such employees who had involved in a shady transactions would be a big risk for the service industries like banking industries and the said action would not only tarnish the fair image of the bank but also would defeat the very purpose of nationalisation of such institution. Keeping such employees whose credit worthiness and integrity are under cloud would shake the very foundation of such Institution. Keeping in view all these, the instant punishment was awarded to him by the Disciplinary Authority and thereupon confirmed by the Appellate Authority. The smallness of the amount involved in the case would under no circumstances give any justification for the workman to get a fair deal and fair treatment from the management. While disposing off the case of similar nature the Hon'ble Court of Kerala has observed that smallness of amount misappropriated is no justification to ignore the commission of offence" (Kerala High Court 1982 FLR Page 48).

The punishment therefore awarded to the workman is not at all disproportionate as contended by the first party.

10. Thus it is submitted that the instant case just and valid action of the Bank does not call for any interference by this Honble Tribunal.

11. Thus Tribunal in its order dated 25th September, 1989 decided the validity of the domestic enquiry as preliminary issue and gave a finding that the domestic enquiry is fair and proper. There acted that both the parties adduced arguments on merits. Thus the point for determination is whether the action of the management of Syndicate Bank in dismissing from service Sri D. Vijaya Rao is justified and if not to what relief is the workman entitled.

12. The first contention advanced by the workman is that the Disciplinary Authority failed in his lawful duties as quasi judicial authority to evaluate the evidence placed before him to arrive at a fair and equitable decision and that the order of the Disciplinary authority is not a speaking order. Ex. M 17 is the letter dated 2nd September, 1983 addressed to the workman by the Disciplinary authority. In the said letter the Disciplinary Authority informed the workman that the Disciplinary Authority in due consideration of the documents placed before him including the proceedings of the enquiry, findings of the Enquiry Officer and letter of confession given by the workman on few occasions, considering the seriousness of the misconduct committed by the workman, the Disciplinary Authority proposed the punishment of dismissal. In the said letter the workman was also required to appear before the Disciplinary Authority for hearing on 30th September, 1983 at 11.00 A.M. and to show cause either orally or in writing as to why the proposed punishment shall not be awarded to him. Ex. M 18 is the proceedings of the Disciplinary Authority dt. 30-9-1983. The said proceedings are signed both by the Disciplinary Authority as well as workman. It is clearly stated in Ex. M-18 that the workman appeared before the Disciplinary Authority in pursuance of the notice of (Ex. M-17) and requested the Disciplinary Authority to view the matter leniently and to pardon him. At that time the workman assured the Disciplinary Authority considered all the relevant documents at the time of M-19 is the proceedings of the Disciplinary Authority dt. 9-11-1983 passing the order of dismissal of the workman with immediate effect. A perusal of dismissal order dated 9-11-1983 (Ex. M-19) clearly goes to show that the Disciplinary Authority perused the report of the Enquiry Officer in detail, and that Disciplinary Authority was convinced with the findings of the Enquiry Officer holding the workman guilty of the charges levelled against the workman. Further the Disciplinary Authority took into consideration the representation made by the workman on 30-9-1983 in pursuance of the show cause notice dt. 2-9-1983 issued to workman. Further it is revealed that the Disciplinary Authority considered all the relevant documents at the time passing of the dismissal order. In the circumstances it is difficult to say that the Disciplinary Authority did not evaluate the evidence placed before him judiciously and that the disciplinary authority did not pass a speaking order.

13. The next contention advanced by the workman is that the Appellate Authority mechanically relied upon the reasoning of the Enquiry Officer and of the Disciplinary Authority and that there was no attempt on the part of the Appellate Authority to evaluate the facts and circumstances and there was total lack of application of mind on the part of the Appellate Authority. I find no merits whatsoever in the said conversion. In the order dt. 25-9-1989, this Tribunal gave a finding that the admission made by the workman is voluntary and that the Enquiry Officer committed no illegality in ascertaining the admission of guilt by the workman and that there was no illegality on the part of the Enquiry Officer in conducting the domestic enquiry. Even at the time of personal hearing before the Disciplinary Authority on 30-9-1983, the workman did not go back from the admission of guilt made by him but he pleaded only for a lenient view before the Disciplinary Authority. Ex. M20 is the order of the Appellate Authority dt. 3-3-1984 it is seen from the said order that the workman in his appeal dt. 29-12-1983 had admitted in writing the irregularities pointed out against him in the charge sheet and his plea was one of mercy only. It is also seen that the workman requested

for personal hearing before the Appellate Authority and the Appellate Authority gave a personal hearing to the workman on 10-1-1984 and that the workman submitted that he had some pressing family financial commitments in the family and therefore he was forced to resort to the above acts. All the above facts are clear in the order of the Appellate Authority dated 3-3-1984. Further it is stated in Ex. M20 that the Appellate Authority considered all the aspects of the matters at the time of passing the order. In the circumstances, it is difficult to say that the Appellate Authority passed the order in question in a mechanical manner.

14. The next contention advanced by the workman is that the appeal was preferred by the workman on 29-12-1983, that the workman was given personal hearing before the Disciplinary Authority on 10-1-1984 that as per Para 19.14 of the Bipartite Settlement, the Appellate Authority shall commence hearing within one month from the date of the receipt of the appeal and that the Appellate Authority shall dispose of the appeal within one month from the date of the conclusion of the hearing, that as per the above Bipartite Settlement the Appellate Authority should have disposed of the appeal on or before 9-2-1984 i.e., at the end of one month period from the date of the conclusion of the hearing (in the present case the hearing was on 10-1-1984), that the instant appeal was disposed off by the Appellate Authority on 3-3-1984 i.e. 23 days after the expiry of the mandatory period, and that the order dt. 3-3-1984 is illegal, void and without jurisdiction. There is no dispute that the appeal was made on 29-12-1983 that the hearing of the appeal was concluded on 10-1-1984 and the order of the appeal was passed on 3-3-1984. It may not necessary to reproduce Para 19.14 of the Bipartite Settlement which is as follows :

19.14. "Such appellate authority shall, if the employee concerned in desirous of in a case of dismissal, hear him or his representatives before disposing of the appeal. In cases where hearing are not required, the appeal shall be disposed of within two months from the date of the receipt thereof. In cases where hearings are required to be given and are requested for such hearings shall commence within one month from the date of receipt of the appeal and shall be disposed of within one month from the date of the conclusion of such hearings."

As per the guidelines in Para 19.14 of the Bipartite Settlement the Appellate Authority has to pronounce the Appellate Authority Order on 10-2-1984 since the personal hearing was concluded on 10-1-1984. The learned representative for the workmen pointed out that the word "shall" used in Para 19.14 of the Bipartite Settlement is mandatory. The learned representative of the Management argued that although the expression "shall" be used, but in view of not providing any penal consequence for failure to pass the order of the Appellate Authority within one month from the date of the conclusion of the personal hearing, the said provision has to be construed as directory but not mandatory and that the order of the Appellate Authority did not suffer from any infirmity for the reasons of the delay in passing the order. Reliance is placed on the decision of the Calcutta High Court reported in 1985 Lab & I.C. page 1762 (GANGES PRINTING INK FACTORY EMPLOYEES INDUSTRIAL CO-OP. SOCIETIES LTD. v. THE 7TH INDUSTRIAL TRIBUNAL) where the similar wording in Section 52 as amended by W.B. Act 57 of 1980 I.D. Act) was considered :

"Sub-Sec. (2) of Sec. 15 as amended provides that it shall be the duty of the Tribunal to determine, within a period of sixty days from the date of the reference of the industrial dispute the quantum of interim relief admissible if any. No penal provision had been made in the said section that no such application shall be sixty days, although the expression 'shall' has been used, but in view of not providing any penal consequence for failure

to take out an application within a period of sixty days from the date of reference, the subsection has to be construed as directory and not mandatory. Thus, the Tribunal has power, if the facts and circumstances of the case so justify, to entertain an application for interim relief under Section 14(2) beyond the period of 60 days."

Since the contention of the Management is supported by the reasoning given in the decision I am inclined to agree with the contention of the Management that period mentioned in the Bipartite Settlement 19.14 is only directory but not mandatory.

15. The last contention advanced by the workman is that the punishment is harsh, excessive and unconscionable and that the Supreme Court decision in the case of DELHI MILL SUPPLY CORPORATION v. JAIN directed the reinstatement of the employee with full back wages and allowances etc., despite the fact that the employee Jain admitted the charge of misappropriation and had in fact been found guilty and had been convicted by the Criminal Court under the probation of Offenders Act and that it is a fit case to give the same benefit to the workman in question. I am not inclined to agree with the said contention of the workman. The facts in the present case are different. In the present case the workman was working as a Cashier in the Nationalised Bank. The very foundation of the Banking business rests on its creditworthiness. Once an employee has been admitted guilty of an offence involving moral turpitude it is not safe for the Bank to retain such an employee in the service any longer. In similar circumstances the High Court of Gujarat in the decision reported in 1984 (11) LLJ, page 322 (G.S. SHAM-BHANI v. STATE BANK OF INDIA, AHMEDABAD) held that once an employee has been adjudged to be guilty of an offence involving moral turpitude by a competent criminal court, by no stretch of reasoning it can be argued that he can be retained in the service of a bank any longer. In the instant case the workman misappropriated the monies of the Bank. In my view the punishment of dismissal is not disproportionate as contended by the workman and so I am of the view that the action of the Bank does not warrant any interference.

16. Thus I find that the action of the management of Syndicate Bank in dismissing from service Sri D. Vijaya Rao is justified and that he is not entitled to any relief.

Award is passed accordingly.

Dictated to the Stenographer, transcribed by him and corrected by me and given under my hand and the seal of of this Tribunal, this the 20th day of November, 1989.

C. RAMI REDDY, Industrial Tribunal
[No. L-12012/249/88-D.II(A)]

Appendix of Evidence.

Witnesses Examined
for the Management:
M. W1 B.P. Acharya

Witnesses Examined
for the Workmen:
NIL

Documents marked for the Management :

- Ex. M1 Order dt. 19-3-83 of the Deputy General Manager, Syndicate Bank, Hyderabad appointing B.P. Acharya as Enquiry Officer.
- Ex. M2 Charge Sheet dt. 17-12-82 issued to D. Vijaya Rao by the Deputy General Manager, Syndicate Bank, Hyderabad.
- Ex. M3 Explanation dt. 22-1-83 to the Charge Sheet submitted by D. Vijaya Rao, to the Deputy General Manager, Personnel Department, Zonal Office, Syndicate Bank, Hyderabad.

- Ex. M4 Enquiry notice dt. 28-3-83 issued to D. Vijaya Rao by the Enquiry Officer.
- Ex. M5 Acknowledgement from D. Vijaya Rao with regard to notice of enquiry.
- Ex. M6 List of witnesses and documents furnished to D. Vijaya Rao as well as to the enquiry officer by the Management representative.
- Ex. M7 Copy of the OG 73 dt. 30-9-81 regarding PSL 23/81 for Rs. 200.
- Ex. M8 Copy of counter-foil of OG 73 PS regarding JL 74/81 for Rs. 150.
- Ex. M9 Copy of counter-foil of OG 73 PS regarding PSL 18/81 for Rs. 100 dt. 12-10-81.
- Ex. M10 Copy of Counter-foil of OG 73 PS. dated 12-10-81 regarding 1983/80 DL for Rs. 300.
- Ex. M11 Letter dt. 10-2-82 addressed to the Manager, Syndicate Bank, Gudur by S. K. Jani Basha with regard to PSL 23/81 for Rs. 2000.
- Ex. M12 Letter dt. 9-2-82 addressed to the Manager, Syndicate Bank, Gudur by G.S. Rao with regard to PSL 18/81 for Rs. 2000.
- Ex. M13 Letter dt. 16-11-81 of D. Vijaya Rao to the Manager, Syndicate Bank, Gudur.
- Ex. M14 Photostat copy of the representation dt. 22-1-83 made by D. Vijaya Rao to the Deputy General Manager, Personnel Department, Zonal Office, Syndicate Bank, Hyderabad.
- Ex. M15 Enquiry Proceedings, dt. 9-4-83.
- Ex. M15(a) Part of Enquiry Proceedings in Ex. 15 at page No. 3.
- Ex. M16 Enquiry Report, dt. 28-5-83.
- Ex. M17 (by consent) Letter No. 1563/306(3)/IRC dt. 2-9-83 of Disciplinary Authority proposing the punishment of dismissal.
- Ex. M18 (by consent) Proceedings of the Personal hearing given by the Disciplinary Authority dt. 30-9-83.
- Ex. M19 (by consent) Proceedings of the Disciplinary Authority awarding the punishment of dismissal dt. 9-11-83.
- Ex. M20 (by consent) Proceedings of the Appellate Authority dt. 3-3-84.
- Ex. M21 (by consent) Circular No. 189/84/BC/46/PER dt. 10-7-84 regarding appointment of Chairman and Managing Director.

Documents marked for the Workmen :

NIL

C. RAMI REDDY, Industrial Tribunal

का. आ. 218 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूनियन बैंक ऑफ इण्डिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 218.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central Govt. Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial dispute between the employers in the United Bank of India and their workmen, which was received by the Central Govt.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, KANPUR

I.D. No. 144 of 1988

In the matter of dispute between:
Shri Parsu Ram C/o Shri V. N. Sehkar,
261104 Birhana Road, Kanpur, U.P.

AND

The Regional Manager
United Bank of India
Central Office
4-B Habibulla State,
Hazaratganj Lucknow.

AWARD

1. The Central Govt. Ministry of Labour, vide its notification no. L-12012/212/88-D2(A) dt. 3rd November 1988, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the management of United Bank of India in terminating the services of Sh. Parsu Ram and not considering him for further employment while recruiting fresh hands under sec. 25H I.D. Act is justified? If not, to what relief is the workman entitled?

2. The workman's case in short is that he was employed at the Bank's Harsh Nagar Branch as sub staff on 1-5-1981 and worked upto 30-6-86 whereafter his services were terminated without any reason and justification w.e.f. 1-7-86. During the said period he performed the duties of a Peon cum-Waterman/Peon-cum-Farrash and Canteen Boy-cum-Waterman on daily wage basis. He had worked for more than 240 days in each year of service including the period of 12 months prior to his termination of his services. He also alleges violation of provisions of section 25F, G and non-observance of Sec. 25H of the I.D. Act. According to him management also committed breach of some of sections of U.P. Shops & Commercial Establishment Act and some paras of Shastri Award read with paras 20.7 and 20.8 of the first Bipartite Settlement. He has therefore, claimed for his reinstatement with full back wages.

3. The case proceeded ex-parte against the management.

4. In support of his case, the workman has filed his affidavit and has proved his case by it. Since by his evidence the workman proved violation of provisions of sec. 25F and 25G, the question of application of sec. 25H does not arise.

4. Accordingly it is held that the action of the management of United Bank of India in terminating the services of Shri Parsu Ram is not justified. The workman is therefore, entitled to be reinstated in service with full back wages and continuity of service w.e.f. 1-7-86.

5. Reference is answered accordingly.

[No. L-12012/212/88-D. II(A)]

ARJAN DEV, Presiding Officer.

V. K. VENUGOPALAN, Desk Officer

नई दिल्ली, 9 जनवरी, 1990

का. प्र. 219 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार मैगसे भारत कोकिंग कोल लिमिटेड की लोयाबाद कोलियरी में प्रबन्धकों से सम्बद्ध विवादों को उन्हे कर्सेकारों के बीच प्रत्यक्ष में विरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम (नं. 1) धारा 17 के अन्वय में प्रकाशित करती है।

New Delhi the 9th January, 1990

S.O. 219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Loyabad Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 33 of 1984

PARTIES:

Employers in relation to the management of Loyabad Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT:

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Employers: Shri G. Prasad, Advocate.

For the Workmen: Shri S. Bose, Secretary.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, the 30th November, 1989

AWARD

By Order No. L-20012(115)/84-D.III(A), dated, the 30th January, 1984, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the management of Loyabad Colliery in Sijua Area No. V of Messrs Bharat Coking Coal Limited were justified in not giving Special Grade (Clerical) to Shri M. S. Bhuin, Clerk Grade-I with effect from January, 1980? If not, to what relief is the workman entitled and from what date?"

2. The case of the management of Loyabad Colliery in Sijua Area No. V as appearing from the written statement submitted on its behalf, details apart, is as follows:

The present reference is not legally maintainable either on law or in facts. No retrospective effect can be given to an award for any period prior to the date on which specific demands, which resulted into industrial dispute, were made. The sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh raised an industrial dispute before Asstt. Labour Commissioner (Central), Dhanbad with regard to the promotion of the concerned workman, M. S. Bhuin by letter No. IV/2/83/4982-83 dated 3-8-83 for the first time demanding special grade for him with effect from January, 1980 and therefore the concerned workman cannot seek promotion to Special Grade, even if any, with effect from January, 1980. Anyway, promotion is a function of the management and cannot be claimed as a matter of right. It is now well settled that whether a particular employee should be promoted from one grade to higher grade depends not only on the length of service but also on his efficiency and other qualification for the post to which he seeks to be promoted, and, in the matter of promotion, the intimate knowledge of the higher authority empowered to promote, has a greater value and in the absence of clear proof of mala fides or victimisation on extrenuous consideration on the part of the management

it is inappropriate for any outside authority to weigh the relevant merits of the individuals who might be holding the higher post and who are aspiring for the same. Furthermore, the determination of the size of the working force is the exclusive right of the employer and no post can be created to suit the claim of the workman. M/s. B.C.C. Ltd. has a well laid-down promotional policy and cadre scheme for the ministerial cadre, non (clerical) ministerial cadre, finance and stores disciplines and others with effect from November, 1973 at Loyabad Colliery, and according to the seniority list of the ministerial clerical cadre and of the finance and stores discipline, Sri Bhuin ranks 25th and there are other 24 other clerical staff who are working in the same clerical grade in the Area who are senior to the concerned workman. In such circumstances, the claim of these 24 clerical staff who are all senior to the concerned workman cannot be ignored. His claim for promotion to Special Grade with effect from January, 1980 is not justified and he is not entitled to promotion either from 1980 or any other date. In the circumstances, the management has prayed that its action in not giving Special Grade (clerical) to the concerned workman with effect from January, 1980 be held to be justified.

3. The case of the sponsoring union, Rashtriya Colliery Mazdoor Sangh, as appearing from the written statement submitted on behalf of the concerned workman, briefly stated, is as follows :

Shri M. S. Bhuin is a permanent employee of the management; he started his career in the colliery as early from 1956. From 1956 to 1961 he worked as Bill Clerk, from 1961 to 1967 as Asstt. Cashier, from 1967 to 1969 in Account Section, from 1969 to 1977 as Time Keeper at Loyabad. He worked in Nichitpur Colliery in Accounts and Stores Section from 1977 to 1978 and again in Loyabad Colliery in Despatch Section from 1978 onwards. By Office Order dated 13-11-73 he was promoted as Time Keeper in Clerical Grade-I. In terms of Clerical Cadre Scheme of the management promotion from Clerical Grade-I to Clerical Special Grade should be done on the basis of areawise seniority list to be prepared during each calendar year. The management of the concerned Area resorted to mal-practices and without following or considering the norms laid down by the management, upgraded/promoted several employees from Clerical Gr. I to Clerical Special Grade who were junior to the concerned workmen and thus caused serious prejudice to him interest. The action of the management in not promoting/upgrading the concerned workman in accordance with the settled norms is an act of unfair labour practice, and also it is arbitrary and illegal. The concerned workman as well as his union represented the matter before the management but to no effect, and thereafter the dispute was taken before the Asstt. Labour Commissioner (C), Dhanbad, who took up the matter with the parties and held conciliation proceeding. During the conciliation proceeding before the A.L.C.(C), Dhanbad, the management did not send any competent officer who could take decision and it was due to the non-cooperative and adamant attitude of the management the conciliation proceeding ended in a failure and hence this reference for adjudication. In view of the above facts and circumstances, the sponsoring union has submitted that an award be passed in favour of the concerned workman holding that he should be up-graded/promoted in Clerical Special Grade with effect from January, 1980 with consequential benefits and paid cost of the proceeding.

4. The management has not examined any witness but introduced in evidence seniority list of ministerial staff of Sijua Area as on 1-1-80 for Clerical Staff Grade I on non-finance discipline which has been marked Ext. M-1. The sponsoring union has not examined any witness but laid in evidence a number of documents which have been marked Exts. W-1 to W-6.

5. The sponsoring union has stated in its written statement that the concerned workman started his career in Loyabad Colliery as early as from 1956 and that from 1956 till 1981 he worked as Bill Clerk, from 1961 to 1967 as Asstt. Cashier, from 1967 to 1969 in Accounts Section and from 1969 to 1977 as Time Keeper at Loyabad Colliery. The union has further asserted that from 1977 to 1978

he worked in Nichitpur Colliery in Accounts and Stores Section and from 1978 again in Loyabad Colliery in Despatch Section. Thus, the statement of facts of the sponsoring union is assertive of the position that the concerned workman joined the service of Loyabad Colliery in 1956. But not a whit of evidence has been laid supportive of this fact. On the other hand, both sponsoring union and the management have relied on the seniority list of ministerial staff of Sijua Area as on 1-1-80 (Clerical Grade-I—non-finance discipline). This seniority list has been marked Ext. W-3/1 which corresponds to Ext. W-4/1 and Ext. M-1. This seniority list discloses that the date of appointment of the concerned workman was July, 1958. It appears that the management forwarded a copy of the seniority list to the concerned workman with opportunity giving to him to raise any objection in writing regarding his position in the seniority list by letter dated 11-2-80/16-5-80 (Ext. W-3 which corresponds to Ext. W-4). There is nothing on record to indicate that the concerned workman raised any objection regarding his position in the seniority list before the management.

6. It appears that he was promoted to the post of Clerical Grade-I with effect from 1-11-1973 by letter dated 30-11-73 (Ext. W-3). It may be mentioned here that Loyabad Colliery falls within the jurisdiction of Sijua Area and admittedly, the seniority list of Clerical Grade-I is prepared areawise.

It appears from the seniority list that the position of the concerned workman therein is at sl. no. 25 and not sl. no. 26 as mentioned in the letter of the management dated 11-2-80/16-5-80 (Ext. W-3 = W-4). Thus, it is seen that there are 24 other workmen who are senior to the concerned workman in Clerical Gr. I on non-finance discipline as on 1-1-80.

7. It is the definite case of the sponsoring union that the management of the concerned Area indulged in to mal-practices and without considering or following the norms laid down by the higher management up-graded/promoted several employees from Grade-I to Clerical Special Grade who were junior to the concerned workman and thus caused serious prejudice to his interest. But this allegation has not been followed up by any cogent or hard evidence. The sponsoring union could not point out by evidence the mal-practice allegedly resorted to by the management in up-grading/promoting several employees from Clerical Grade-I to Clerical Special Grade who were junior to the concerned workman. Thus the allegation of the sponsoring union that several employees on Clerical Grade-I were up-graded/promoted to Clerical Special Grade over the head of the concerned workman has no foundation at all.

8. It appears that the concerned workman by his letter dated 8-6-82 made a representation to the management complaining that clerks junior to him who were working in Finance Department had been up-graded (Ext. W-2). In this representation also the concerned workman has not spelt out the names of the workmen in Finance Department who are considered to be his junior and who had been up-graded. There is no evidence on record that the management is required to maintain a composite seniority list in respect of ministerial staff on general clerical grade and on finance discipline. The Implementation Instructions of J.B.C.C.I. issued in connection with N.C.W.A. envisage Cadre Scheme for ministerial staff separately for General Clerical Cadre, Store Personnel, Loading Despatch and Stores Cadre, Cash Personnel Cadre, Accounts Cadre and Secretarial Cadre. In any view of the matter there is no positive and solid evidence on record to show by specific instance that the case of the concerned workman for promotion/un-gradation to Special Grade Clerk has been ignored by the management in preference to workmen on Clerical Cadre of any discipline who were junior to him. This being the position, there is nothing in evidence on the basis of which it can be concluded that the management of Loyabad Colliery was not justified in not placing the concerned workman in Special Grade (Clerical) with effect from January, 1980.

9. Accordingly, the following award is rendered—the action of the management of Loyabad Colliery in Sijua Area-V of M/S. B. C. C. Ltd. in not placing the concerned workman in Special Grade (Clerical) with effect from January, 1980 is not unjustified.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012(115)|84-D.III(A)|IR(coal-I)]

का. भा. 220 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड के सीरा क्षेत्र सं. 11 की धारा (दक्षिण) कोलियरी के प्रबन्धन से सम्बद्ध नियोगकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है।

S.O. 220.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central Govt. Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Bhowra(s) Colliery of Bhawra Area No. XI of BCCL and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT

Shri I. N. Sinha—Presiding Officer

Reference No. 169 of 1985

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Bhowra (South) Colliery of Bhowra Area No. XI of BCCL and their workmen.

APPEARANCES :

On behalf of the workmen—Shri N.K. Singh, Branch Secretary, R.C.M.S Bhowra.

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, dated the 5th December, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10 (1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(52)|85-D. IV(B), dated the 6th December, 1985.

SCHEDULE

“Whether the action of the Management of Bhowra (South) Colliery of Bhowra Area No.

XI of M/s. Bharat Coking Coal Ltd., P.O. Bhowra, Distt. Dhanbad in not regularising Shri Chhotelal Jaiswara, D.C. Loader on time rate job is justified? If not, to what relief the workman is entitled?”

In this case both the parties filed their respective W.S. documents etc. Subsequently at the stage of oral evidence both the parties appeared before me and filed a Joint compromise petition. I heard both the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer
[No. L-24012(52)|85-D.IV(B)|IR(Coal-I)]

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, DANBAD

In the matter of reference No. 169 of 1985

PARTIES :

Employers in relation to the Management of Bhowra (South) Colliery of Bhowra Area No. XI of M/s. BCCL, P.O. Bhowra District, Dhanbad.

AND

Their workman, represented by Rashtriya Colliery Mazdoor Sangh, Bhowra, Branch, Post Office Bhowra. District Dhanbad.

JOINT COMPROMISE PETITION OF EMPLOYERS AND WORKMEN

The above employers and the workmen most respectfully beg to submit jointly as follows :—

- (1) That the Management and the workman/Sponsoring Union have negotiated the matter covered by the aforesaid reference with a view to arriving at an amicable and mutually acceptable overall settlement.
- (2) That as a result of such negotiations, the Management and the workmen/Sponsoring Union have agreed to settle the matter mutually on an overall basis on the following terms and conditions :—

(a) It is agreed that the Management shall provide employment in daily rated Category-I to Shri Chhotelal Jaiswara, the workman concerned, on the minimum of the pay scale of Category-I plus one increment in the pay scale of daily rated Category-I. He will be required to work on such job of Cat.-I.

(b) It is agreed that the employment as stipulated in Clause (a) above shall be provided to Shri Chhotelal Jaiswara the workman concerned from the date of his resuming work after this joint compromise petition has been accepted by this Hon'ble Tribunal. The workman concerned

should however so resumes duty within 15 days of the acceptance of the joint compromise petition by this Hon'ble Tribunal and if he fails to do so he will be deemed to have left his employment.

- (c) It is agreed that the period of idleness of the workman concerned till the date of his resumption of duty as specified in Clause (b) above will be treated as extra ordinary leave without wages. He will however have the benefit of continuity of service and his service will be treated as uninterrupted.
- (d) It is agreed that the workman shall not be entitled to any back wages or any other benefit other than what has been provided for in the above clauses.
- (e) It is agreed that this is an overall agreement in full and final settlement of all the claims of the workman concerned and the sponsoring Union arising out of the above reference.
- (3) That the employers and the workman/sponsoring Union hereby jointly declare and confirm that they consider the aforesaid terms of compromise as fair, just and reasonable to both the parties.

In view of the above the employers and the workman/Sponsoring Union jointly pray that the Hon'ble Tribunal may be pleased to accept this joint compromise petition and give an award in terms thereof and dispose of the above reference.

(N. K. Singh), R. K. DAY, General Manager,
Branch Secretary, Bhowrah Area, BCCL.

for & on behalf of the
employers.

Rashtriya Colliery Maxdoor Sangh,
Bhowrah Branch, P.O. Bhowrah
District Dhanbad

R. S. MURTHY, Advocate
for the employers.

Thumb Impression.
for & on behalf of the workman.
Chhotelal Jaiswara,
Workman concerned.

Dated

का. आ. 221 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैगर्स सेन्ट्रल कोलफील्ड्स लि. का केडला नार्थ एवं केडला अंडरग्राउंड प्रोजेक्ट के प्रबंधन से सम्बन्धित विवादों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक शक्ति-करण (सं. 1) धनबाद के पंचायत को प्रकाशन करती है।

S.O. 221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure

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in the industrial dispute between the employers in relation to the management of Kedla North and Kedla Underground Project of CCL and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 24 of 1979

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947

PARTIES :

Employers in relation to the Kedla North and Kedla Underground Project of Central Coalfields Limited, Post Office Kedla, District Hazaribagh.

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri B. Joshi, Advocate.

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 5th December, 1989

AWARD

This reference has been remanded to this Tribunal vide order of his Lordship passed in C.W.J.C. No. 1961 of 1981(R) dated 23rd May, 1988.

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 had referred the following dispute to this Tribunal for adjudication vide their Order No. I-20012/245/77-D.III(A) dated the 8th May, 1979.

SCHEDULE

“Whether the action of the management of Kedla North Colliery and Kedla Underground Project, Post Office Kedla, District Hazaribagh in dismissing Shri Anand Bahadur Singh, Cashier from service with effect from 22nd April, 1977 was justified? If not, to what relief is the said workman entitled?”

The concerned workman Shri Anand Bahadur Singh was working as Cashier in Kedla North colliery and Kedla Underground Project with effect from 1st April, 1975. According to the management the concerned workman was required to handle wage bills and other bills to make payment of some bills. The concerned workman was required to send the bill to the Area Accounts office after making payment of the bills and making necessary entries in the relevant cash books. The concerned workman absented from 23rd of January, 1986 from his duties without any information or taking leave from the management. Further the concerned workman had drawn some money on 25th January, 1976 from the Group Office, Parej, and made over the same to one Sri Bijoy Singh one of his colleague in the cash section of Kedla Underground Project in the month of February, 1976. Some complaints were received from the local union and from some of the female workers working in Kedla Jharkhand Group alleging that the payment meant to be made to them were not disbursed to them. On the said complaint the management got a preliminary enquiry made which revealed that the concerned workman had adopted various fraudulent methods to defalcate funds of the management. The concerned workman had drawn sum of Rs. 40366.02 meant for the grant of maternity benefit to 47 female workers of the colliery but the payment were not made. It was also found that another bill

for maternity benefit to 12 female workmen of the colliery had been prepared and an amount of Rs. 11,839.46 P. was withdrawn although those 12 female workmen were not entitled to the benefits and were also not paid the amount withdrawn. It was alleged that all those bills were got prepared by the concerned workman in collusion and conspiracy with Shri M. P. Ambastha pre-audit clerk of the colliery. On the above facts a chargesheet was issued against the concerned workman and Shri M. P. Ambastha. Apart from the said defalcation of fund the concerned workman was further charged for continuously absents himself without permission and without satisfactory cause for more than 10 days and for not handing over charge of the cash section including the records, keys of the iron safe and the steel box of the cash office.

As the concerned workman was absents from his duties from 23rd January, 1976 the chargesheet was sent to him by Regd. post as well as under certificate of posting to his local address and to his permanent address. Those letters were returned from the P.O. with remark that no such person was available. Thereafter the management decided to hold an enquiry and Shri S. N. Prasad was appointed as the enquiry officer. Notice regarding the enquiry was sent to the concerned workman by Regd. Post and its copy was also sent to him under certificate of posting by local address and his home address but the same could not be delivered to the concerned workman. Thereafter the management got the notice published in 3 newspapers. In spite of the publication of the notices, the concerned workman did not appear at the enquiry and as such the enquiry officer proceeded ex-parte against the concerned workman. The other workman M. P. Ambastha appeared before the Enquiry officer and the enquiry was conducted in his presence. The enquiry officer conducted the enquiry and found the concerned workman guilty of the charges framed against him and thereafter after considering the report of the enquiry officer the management passed an order of dismissal against the concerned workman with effect from 21st April, 1987. So far Shri M. P. Ambastha was concerned he was found guilty of negligence only and was awarded a minor punishment of stoppage of one increment.

Subsequently the concerned workman appeared in the office of the management and on demand being made by him, he was paid the subsistence allowance. Thereafter the concerned workman raised the industrial dispute. On failure of the conciliation the present reference was made to this Tribunal by the Central Government for adjudication.

The case of the concerned workman in the W.S. before this Tribunal is that on 27th January, 1976 he fell sick and submitted his application for grant of leave till recovery. He was suspended with effect from 29th March, 1976 and was arrested by the police on the allegations made against him by the management that he had defalcated the colliery money and absconded without information. According to the concerned workman he had not absconded and had not defalcated or embezzled any colliery cash. He had not committed any act of misconduct under the provision of the Standing Orders.

It was prayed before the Tribunal at the earlier stage that it may be decided as a preliminary issue as to whether the domestic enquiry was fair and proper. The Tribunal by its order dated 10th October, 1980 held that the domestic enquiry was fair and proper. Thereafter the case was heard on merit by my predecessor-in-office and Award dated 13th January, 1981 was passed holding that the dismissal of the concerned workman from service in the facts and circumstances of the case was not justified. The management went before the Hon'ble Patna High Court in C.W.J.C. No. 1961 of 1981(R) and thereafter his Lordship remanded the case to this Tribunal vide order dated 23rd May, 1988 giving necessary directions to be observed by the Tribunal.

It will appear from the order passed in C.W.J.C. No. 1961 of 1981(R) that after an elaborate discussion of the matter in issue his Lordship directed as follows :—

"So far as these 2 charges are concerned I do not find the Tribunal has taken into account any other evidence except that which was produced in the domestic enquiry. (These 2 charges are charge No. (a)

and (b) of the chargesheet Ext. M-1 dated 27th March, 1976).

"So far as charge (c) is concerned, namely abstention from duty continuously without permission and without satisfactory cause for more than 10 days since 23rd January, 1976 I find that the Tribunal has taken into account evidence which was not produced in the domestic enquiry.

"I further hold that the Award in so far as it relates to charge (c) is vitiated since the Tribunal has taken into account the evidence it was not available to the enquiry officer in the domestic enquiry.

"In the result this application is allowed. The matter is remitted back to the Industrial Tribunal No. 2, Dhanbad with a direction that the Tribunal shall consider afresh charge (c) alone and record its finding on the basis of the material which was available in the domestic enquiry and without considering any afresh evidence on this question which was not available in the domestic enquiry. So far as Award relates to charges (a) and (b) I have found the Award to be in accordance with the law and the Tribunal is not required to re-consider the matter in respect of those 2 charges. After considering the matter in relation to charge (c) as indicated above, the Tribunal shall pronounce its award. The Award of the Industrial Tribunal dated 13th January, 1981 is set aside. The Tribunal shall, however, proceed to make an Award as directed above after hearing the parties and having regard to the provision of Section 11A of the I.D. Act."

His Lordship has very lucidly given the direction in the order as to the matter which now remains to be decided by this Tribunal after the case has been remanded.

It will appear that my predecessor-in-office did not find the concerned workman guilty of the charges (a) and (b) of the chargesheet Ext. M-1 and his Lordship confirmed the said finding.

Thus the only point for decision in accordance with the direction of his Lordship is whether the charge (c) of Ext. M-1 has been established against the concerned workman and whether the punishment of dismissal inflicted upon the concerned workman is too severe.

The charge (c) in Ext. M-1 is as follows :—

"Shri Anand Bahadur Singh has remained absent from his duty continuously without permission and without satisfactory cause for more than 10 days since 23rd January, 1976 and has not reported to duty uptill date. Uptill date he has neither handed over his charge of the cash section nor the records and keys of the iron safe and the Steel Box in which important records of cash section are kept." The above charge is a misconduct under clause 17(1)(n) of the Model Standing Orders for Industrial Establishment in Coal Mine which is as follows :—

"continuous absence without permission and without satisfactory cause for more than 10 days."

As the concerned workman did not appear before the Enquiry officer even in spite of registered notice and publication of the notice in newspapers, the enquiry proceeded ex-parte against him. Now, we are not concerned with any other evidence except with regard to the charge (c) of the chargesheet. In this connection the management had examined MW-2 Shri S. D. Upadhyaya the then Superintendent of Mine of Kedla North colliery and Kedla U.G. Project. In respect of charge (c) he has stated that he knew Anand Bahadur Singh, the concerned workman, cashier of Kedla North and Kedla U/G. Project. He has stated that from the Attendance Register maintained at the colliery he found that the concerned workman did not report on duty after 22nd January, 1976. He further stated that no leave was granted by him to the concerned workman and the concerned workman had not asked for any leave. He has further stated that the concerned workman did not give charge of his office, cash and other

records to any one. He further stated that he had written to the concerned workman by Regd. post to resume his duties but the letter was not delivered to the concerned workman. The said evidence of MW-2 remained in tact as it was not challenged. The management had filed the attendance register before the enquiry officer showing the concerned workman absent from 23rd January, 1976 onwards and the same was marked Ext. No. 5 before the Enquiry Officer. The said attendance register could not be filed by the management before me. The said original attendance register Ext. M-5 had been filed before my predecessor-in-office but the said documents along with other documents were received back by the management under receipt granted by them after the Award dated 13th January, 1981. Now it is submitted on behalf of the management that when the Tribunal directed for filing the original documents it was found that the original papers were not available and could not be traced. The non-production of the Attendance Register is not of much importance now. In the second para of the W.S. of the workman it is admitted that he fell sick on 27th January, 1976. However, he stated that he had submitted an application for grant of leave till recovery. MW-2 has clearly stated that the concerned workman had not sent any application for leave and that no leave was granted to him. As the concerned workman had not appeared before the enquiry officer he did not file any application showing that he had applied for leave. Moreover in W.S. the concerned workman has stated that he fell sick on 27th January, 1976 but he could not show any reason before the enquiry officer as to why he had absented from 23rd January, 1976.

In the above view of the evidence adduced before the enquiry officer and no explanation furnished to show cause of his absence, the enquiry officer had no option but to hold on the evidence and materials before him that the charge (c) of the charge-sheet was established against the concerned workman. I do not find any reason to have a different view regarding the said finding arrived at by the enquiry officer. The facts which have been tried to be shown before me at this stage were not brought before the enquiry officer for his consideration and as such it is extraneous to the domestic proceeding against the concerned workman and the same can not be accepted.

In the result I hold that the charge (c) of the chargesheet Ext. M-1 has been established against the concerned workman.

Now the point for consideration is whether the punishment of dismissal passed against the concerned workman was too severe. It will appear from the finding of the enquiry officer that the concerned workman was found guilty of charges (a), (b) and (c) and on such basis the disciplinary authority had passed the order of dismissal against the concerned workman. The charges (a) and (b) of the charge sheet were of very serious nature amounting to dishonesty on the part of the concerned workman and had it been established I think there could be no other punishment than the punishment of dismissal. But now it has been established that the charges (a) and (b) have not been proved against the concerned workman and the only charge which has been found to be established is charge (c) of the chargesheet. The concerned workman had no doubt absented from his duty for over 10 days without any leave or permission and has not been able to explain his absence, even then it appears that the order of dismissal passed against him for charge (c) is too severe. In charge (c) it is also alleged that the concerned workman did not hand over the charge of cash section, records and keys etc. but that in itself is not a subject of misconduct separately charged. It has been added to charge (c) under clause 17(1)(n) in order to show the gravity of the said charge. The concerned workman is out of employment since after his dismissal dated 21st August, 1977 and since then more than 12 years have passed.

In my view the ends of justice will be fully satisfied if the concerned workman is reinstated to his job but as a measure of punishment he will not be entitled arrears of his wages till the date of his joining. However, he will be entitled continuity of his service. The management is, therefore, directed to re-

instate him within 2 months from the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(245)/77.D.III(A)/IR (Coal-I)]

का. जा. २२२.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसरण में केन्द्रीय सरकार भारत कोयला कोल लि० का भोवरा क्षेत्र सं० ११ की भावरा (दक्षिण) कोयला के प्रबंधन में सम्बद्ध नियंत्रकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं० २) धनबाद को पत्रादेश प्रकाशित करता है।

S.O. 222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhowra(S) Colliery, Bhowra Area No. XI, M/s. BCC Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

REFERENCE NO. 363 OF 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Bhowra (S) Colliery, Bhowra Area No. XI of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen—Shri J. D. Lall, Vice-President, Bihar Mines Laljhanda Mazdoor Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 8th Decembe, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (68)/86-D. IV(B) dated, the 8th December, 1986.

SCHEDULE

"Whether the demand of Bihar Mines Laljhanda Mazdoor Union to re-employ Shri Karim Mia, DCL as time rated workman

in Bhowra (S) Colliery of Bhowra Area No. XI of M/s. BC. C. Ltd. with full back wages is justified? If so, to what relief the workman is entitled?"

The case of the workmen is that the concerned workman Shri Karim Mia was appointed as D. C. Loader in Bhowra (S) colliery of M/s. BCCL in 1967. He continued to work as D. C. Loader till sometime in the year 1982. He was transferred from the job of D. C. Loader to the job of Haulage operator in the time rated job in 29 incline due to urgency of work in 1982. Since then he is continuing to work regularly and continuously as a Haulage operator till 19-9-85. On 20-9-85 the management all on a sudden stopped the concerned workman from working as a Haulage operator and was verbally asked to go back to his original job as D. C. Loader. Prior to that the concerned workman had made representation to the management for his regularisation as Haulage operator as he had regularly and continuously worked as Haulage operator for about 3 years. But the same was not allowed. After he was stopped from the work of Haulage operator, the concerned workman protested but as the management was not agreeable to regularise him as Haulage operator, an industrial dispute was raised by his union against the stoppage of his work as Haulage operator and also for regularising him in the post of Haulage operator before the ALC(C), Dhanbad vide complaint dated 9-9-85. During the conciliation proceeding before the ALC(C) a settlement dated 14-10-85 was arrived at between the parties and the dispute was amicably settled. As per the terms of the settlement the concerned workman was to be provided with regular job of a Haulage operator when incline No. 19 starts working or when approval for his regularisation as Haulage operator is received from the Area office whichever is earlier and in the meantime the management agreed to provide him with job of Haulage operator or any other time rated job. After the said settlement the concerned workman was provided with the job of Haulage operator but again the management stopped him from the job of Haulage operator and asked him to go back to work as D. C. Loader with effect from 26-10-85 in violation of the terms of settlement dated 14-10-85. The said settlement was binding on both parties under Section 18(3) of the I. D. Act, 1947. The union of the workmen again raised an industrial dispute before the ALC(C) Dhanbad regarding the violation of the terms of the settlement and thereafter the present dispute has been referred to this Tribunal for adjudication. Incline No. 19 started working since 1-1-1986 and as per the terms of the settlement dated 14-10-85 the concerned workman is entitled to be provided with regular job of Haulage operator and to be regularised as such. On the above facts it is prayed that the concerned workman may be provided with the job of Haulage operator and that he should be regularised in the said job in accordance with the terms of the settlement dated 14-10-85 and that he should be paid the wages and other emoluments for the idle period from 26-10-85 till he is provided the job of Haulage Operator.

The case of the management is that the concerned workman was working as a D. C. Loader. He had been absenting from his duties with effect from

26-10-85 without permission claiming for the job of Haulage operator and he had not been stopped from his duties by the management. The concerned workman was never regularised as Haulage Operator or as time rated worker and as such he had no right to absent from his duties when he was reverted back to his original job of D. C. Loader. He was given the job of time rated worker of Haulage operator during leave and sick vacancies and was paid the difference of wages between time rated job and his original job of D. C. Loader. A conciliation settlement dated 14-10-85 was entered into between the parties in which it was stipulated that the concerned workman would be given the job of Haulage operator or time rated job during leave and sick vacancy till such period No. 19 incline starts functioning and permanent vacancy exists. Thus the concerned workman was bound to continue as D. C. Loader on his substantive employment and cannot absent himself from his duty on the ground that he has not been given employment as Haulage operator or in any time rated job. The concerned workman had no right to claim for the job of Haulage operator on the basis of the settlement dated 14-10-85. On the above facts it is prayed that the prayer of the workmen be rejected, and an Award be given in favour of the management.

The only point for decision in this case is whether the concerned workman is entitled to time rated job in Bhowra (S) colliery with full back wages from the date of the stoppage of his work.

The workmen examined the concerned workman WW-1 Karim Mian and exhibited 3 documents marked Ext. W-1 to W-3. The management neither examined any witness nor exhibited any document.

From the case of the parties it is clear that both the parties base their claim on the settlement dated 14-10-85 which has been marked Ext. W-1 in this case. As such we have to see as to what is provided in the settlement Ext. W-1 dated 14-10-85 and whether on the basis of the settlement the concerned workman can be given relief which is being sought for by the union. It will appear from the settlement Ext. W-1 that the Working President of Bihar Mines Laljhanda Mines Union vide his letter dated 9-9-85 raised industrial dispute before the ALC(C) regarding the regularisation of the concerned workman to the post of Haulage operator. The first para of the terms of the settlement provides "the management agreed to post Shri Karim Mian, D. C. Loader as Haulage operator on preference from the date the incline No. 19 starts functioning or receipt of the approval of the headquarters to regularise the workman as Haulage khalasi, whichever is earlier." So far this term of the settlement is concerned WW-1 has stated that incline No. 19 started mining in January, 1986 but he was not given the job of Haulage operator in the said incline. It was suggested to WW-1 in his cross-examination that incline No. 19 which started mining in January, 1986 was closed after about 3 to 4 months. The concerned workman WW-1 did not state specifically whether incline No. 19 which started working in January 1986 was closed after about 3 to 4 months. The workmen have not examined any other witness to show that incline No. 19 is still working

or continuing working from January, 1986 and it was not closed. If incline No. 19 had stopped working after 3 to 4 months the concerned workman cannot be given employment as Haulage operator because the contingency of giving employment to the concerned workman as Haulage operator arose only when new vacancies cropped up after the opening of the working of incline No. 19. As the evidence is not specific that the said incline after its opening continued mining work, I hold that the concerned workman could not have been given the job of Haulage operator in incline No. 19 as its mining work was stopped after about 3 to 4 months.

There is no evidence to the effect that the headquarters passed any order to regularise the concerned workman as Haulage khalasi/operator and as such the concerned workman cannot claim to be regularised as Haulage Khalasi as per terms stated in para 1 of the settlement.

Now let us take up para-3 of the settlement Ext. W-1. It provided "till the management provides regular job of Haulage Khalasi the parties agreed to provide the workman the job of Haulage Khalasi or any time rated job as per available vacancy". We have already seen that as incline No. 19 stopped after working for sometime the concerned workman could not have given employment in incline No. 19. It will also appear that there was no order of regularisation of the concerned workman as Haulage Khalasi from headquarters. Thus this alternative term in para-3 has to be effective and made operative. It will appear therefore from para-3 of the settlement that till the management provides regular job of Haulage Khalasi the management was to provide the concerned workman with the job of Haulage Khalasi or to provide any time rated job whichever was available. It does not mean that the concerned workman will be given the job of Haulage Khalasi or a job in the time rated only when there was any vacancy. The settlement envisaged that the concerned workman should be given the job of Haulage Khalasi where it was available in the sick or leave vacancy or if it was not available the management was to give him job of the time rated where it was available. The management as per the terms of the settlement had no authority to send the concerned workman to work in the piece rated job of D.C. loader. Sending of the concerned workman to work as D. C. Loader was no longer in existence after the settlement Ext. W-1 and as such the insistence of the management to return back to the concerned workman to work as D. C. Loader in the absence of any provision being made for his employment as Haulage Khalasi or in any time rated job was no longer in the hands of the management. In the above view of the matter I think the concerned workman had rightly refused to work as D. C. Loader and was quite justified in demanding his employment either as Haulage Khalasi or in any time rated job whichever was available with the management. I hold therefore that the concerned workman is entitled to the job of Haulage Khalasi or any time rated job available with the management as per terms of the settlement Ext. W-1 and that the management had no right to send back the concerned workman to the post of D. C. Loader on the plea that there was no job of Haulage khalasi or any time rated job. As the insistence of the management to

send back the concerned workman to work as D. C. Loader was not in accordance with the terms of settlement, the concerned workman is entitled to the post of Haulage Khalasi or any other time rated job and is also entitled for the wages of the period since when his work was stopped in view of the fact that the management had no right to send back the concerned workman to work as D. C. Loader in terms of the settlement Ext. W-1.

In the result, I hold that the demand of Bihar Mines Laljhanda Mazdoor union for giving employment to the concerned workman Shri Karim Mian in the time rated job is justified and that the concerned workman is entitled to the full back wages from the date of his stoppage of work as Haulage operator or any time rated job with consequential benefits. The management is therefore directed to give employment to the concerned workman either as Haulage Khalasi or in any other time rated job with payment of full back wages and other consequential benefits within one month from the date of publication of the Award.

This is my Award.

Sd/-

[No. L-24012(68)/86-D. IV. B/IR(Coal-I)]

I. N. SINHA, Presiding Officer

का. प्र. 223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लि. का इंटर्नल ऑडिट डिपार्टमेंट ऑफ हेडक्वार्टर्स एडमिनिस्ट्रेशन के प्रबन्धन से सम्बन्धित विवादों और उनके कर्मचारियों के बीच झगड़ों में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) धनबाद के पचासवें प्रकाशित करती है।

S.O. 223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Internal Audit Deptt. of H.Q. Administration of M/s. BCL and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 131 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Internal Audit Department of Headquarters Administration of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri R. P. Singh,
Secretary, Colliery Karamchari Sangh.

On behalf of the employers.—Shri B. Joshi,
Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 4th December, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(352)/86[D.III(A), dated, the 20th April, 1987.

SCHEDULE

“Whether the demand of Colliery Karamchari Sangh for promotion of S/Shri K. B. Jha, K. N. Ambastha and R. B. Sharma, Senior Stock Verifiers of Internal Audit Deptt. of Headquarters Administration of M/s. Bharat Coking Coal Limited to special grade with effect from 3-11-1982 is justified? If yes, to what relief the workmen are entitled?”

The case of the workmen is that the concerned workmen S/Shri K. B. Jha, K. N. Ambastha and R. B. Sharma were appointed as clerks Grade-III. In the year 1975 the management had the requirement of Stock verifier. The said posts were newly created and were not in the main stream of clerical cadre. The management therefore made selections for the post of Stock verifier from amongst the clerks through the Departmental promotion committee for the filling those posts. The selection of stock verifiers were not based on the seniority in the post of clerical cadre. The three concerned workmen were selected in the interview by the selection committee and were placed in the merit list at Sl. No. 23, 24 and 27 vide letter dated 17/20-12-1980. The concerned workmen along with others were promoted as Sr. Stock verifier Grade-II vide office order dated 6-4-84. Prior to that the management promoted Shri Guru Sewa Singh Stock verifier and Shri P. B. Banerjee Grade-I clerk to special grade with effect from 30-11-1982 vide office order dated 3-11-1982. The said Shri Guru Sewa Singh and P. B. Banerjee were at Sl. No. 31 and 32 of the seniority list of clerk Grade-I and they were junior to the 3 concerned workmen in the seniority list of clerical grade-I maintained by the management. The management deprived the concerned workmen from their promotion as clerk special grade in the year 1982 along with Shri Guru Sewa Singh and Shri P. B. Banerjee and the concerned workmen were superseded by Shri Guru Sewa Singh and P. B. Banerjee arbitrarily and illegally. The management thus allowed promotion to Shri Singh and Banerjee who were junior to the concerned workmen and as such the said promotion was illegal. On the above facts it is prayed that the concerned workmen be given promotion with retrospective effect, i.e., from 3-11-1982 when Guru Sewa

Singh and Shri P. B. Banerjee were promoted along with the arrears of difference of wages and other benefits.

The case of the management is that the concerned workmen who were appointed in Clerk Grade-II/III were selected as Stock verifier in Clerical Grade-I. The vacancy of Stock verifier was outside the clerical cadre and the post of Stock verifier was not a post of promotion in the clerical grade. The said selection was not based on the seniority of the clerks in the clerical cadre. After selection of stock verifier including the three concerned workmen they were posted at different places in the company with the stipulation that their seniority in the post of Stock verifier will be reckoned from their joining the new post.

In December, 1980 the seniority list of the employees of Clerical Grade-I who were working in the headquarters was published in which the names of the stock verifier were also included inadvertently. In 1982 some posts of different grades of clerical cadre were to be filled up for which a departmental promotion committee was constituted. The D.P.C. was held on 25-8-1982. The management sent a list of only Clerical cadre employees to the D.P.C. for consideration of promotion and the case of stock verifier were not sent to the D.P.C. as they were no more in the clerical cadre. Some of the stock verifier had already raised an industrial dispute about their inter se seniority as stock verifier on the basis of their selection done in the year 1975. The said industrial dispute was referred to CGIT No. 3, Dhanbad, for adjudication under Ref. No. 6 of 1980. On 15-12-1982 the management published a separate seniority list of the stock verifiers as they were in a separate cadre from the Clerical cadre. In the said seniority list of the stock verifier the names of the 3 concerned workmen were included. The concerned workmen did not protest against the said seniority list published on 15-12-1982. In the meantime the CGIT No. 3, Dhanbad gave an Award on 4-1-1983 in reference No. 6/80 whereby the inter se seniority of stock verifiers as standing on their date of selection in the year 1975 was to be maintained according to their panel seniority and not from the date of their joining. The stock verifiers are entirely in different cadre than the clerical cadre and as such there cannot be comparison of the concerned workmen who are stock verifier with the 2 employees, namely, Shri P. B. Banerjee and Guru Sewa Singh who are in the Clerical Cadre.

Although Shri Guru Sewa Singh was selected as Stock verifier in 1975, he opted out of the cadre of stock verifier and went back to clerical cadre. When the D.P.C. was held for the promotion in the Clerical cadre as special clerical grade on 25-8-1982, Shri Guru Sewa Singh was already in the Clerical cadre and as such his case was considered by the D.P.C. and was recommended for promotion to the next higher post of clerical special grade in the clerical cadre along with others. So far P. B. Banerjee is concerned he was always in the clerical cadre and had never worked as stock verifier and as such the case of the concerned workmen cannot be compared with the case of P. B. Banerjee.

Some posts of Sr. Stock verifier were required to be filled up in the year 1984. A D.P.C. was held for that purpose in 1984 which considered the case of all the stock verifiers whose names appeared in the seniority list of stock verifier published on 15-12-1983 including the case of the three concerned workmen. On the basis of the recommendation of the D.P.C. some of the stock verifiers including the three concerned workmen were promoted as Sr. Stock verifier vide promotion order dated 6-4-84. The claim of the union for giving retrospective promotion to the three concerned workmen by comparing their case with clerical cadre employees is not justified and there has been no supercession in the case of the concerned workmen as has been alleged. On the above facts it is prayed that there is no merit in the demand of the union and that the concerned workmen are entitled to no relief.

The only point for decision is whether the three concerned workmen are entitled to be promoted to special grade clerk with effect from 3-11-1982 as in the case of Shri Guru Sewa Singh and P. B. Banerjee.

The concerned workmen examined 2 witnesses and the management examined one witness in support of their respective case. The documents of the management have been marked Ext. M-1 to M-23 and the documents of the workmen are marked Ext. W-1 to W-6.

Admittedly, the concerned workmen were working in the Clerical cadre and in the year 1975 they were selected to the post of Stock verifier in internal audit department of BCCL headquarters in 1975. Ext. M-1 dated 6-7-1975 is the letter showing requirement of personnel for the post of stock verifier stating the qualification and experience of the employees whose cases can be considered for the post of stock verifier. Ext. M-2 dated 19-11-1975 is the office order showing the employees name who were found suitable for promotion to the post of Stock verifier in the scale of Rs. 442-678 per month and were accordingly appointed to the post of stock verifier and were posted to internal audit department Jealgora. From the said order it will appear that Sl. No. 1 was of Shri K. B. Jha, Sl. No. 4 was of Shri R. B. Sharma, Sl. No. 5 was of Kedar Nath Ambastha and Sl. No. 8 was of Shri Guru Sewa Singh. Ext. M-7 dated 17/19-12-1980 equivalent to Ext. W-1 is a final seniority list of Grade-I clerks working in the difference headquarters offices in the scale of pay of Rs. 572-944. This seniority list was a common seniority list of the employees working at different places and different cadres getting the salary of clerical grade-I. This seniority list will show the concerned workman Shri R. B. Sharma at Sl. No. 23, K. B. Jha at Sl. No. 24 and Shri K. N. Ambastha at Sl. No. 27 and Shri Gurr Sewa Singh at Sl. No. 31 and Shri P. B. Banerjee at Sl. No. 32. Ext. M-8 is the minutes of the DPC held on 23-12-1980 at Karmik Bhawan to assess the suitability of the existing clerk grade-I attached to different offices of headquarters for their promotion to special grade. Ext. M-9 dated 29-1-1981 is the office order dated 29-1-1981 showing the names of the grade-I clerks promoted to the post of special grade clerk. Pre-

sently we are not concerned with the promotion of the employees to special grade vide Ext. M-8 and M-9.

The provisional seniority list of Grade-I clerks was published on 31-5-1982 vide Ext. W-10. This was published when the cadre of stock verifier was separated from the common cadre of clerical grade-I. Ext. M-12 dated 20-7-1982 is the final seniority list of Grade-I clerk working in the different headquarters offices which does not include the names of the concerned workmen and contains the names of Shri Guru Sewa Singh at Sl. No. 6 and Shri P. B. Banerjee at Sl. No. 7. The said final seniority list of Grade-I clerk Ext. M-12 clearly shows that the seniority list of clerical grade-I was separated from the cadre of the stock verifier as the said seniority list did not include the names of any of the stock verifier. Ext. M-13 is the minutes of the D.P.C. held on 25-8-82 for assessing the suitability of ministerial staff for promotion from Clerical Grade-I to clerk special Grade-II and Grade-I. It contains an annexure bio-data of Grade-I clerks and it does not contain the name of the concerned workmen. Ext. W-3 is the office order dated 3-11-1982 by which Guru Sewa Singh and Shri P. B. Banerjee were promoted to the post of Clerk special grade. The promotion in Ext. W-3 was made in accordance with the D.P.C. held on 25-8-1982 vide Ext. M-13. It appears that the D.P.C. had considered the case of clerical grade-I to the post of special grade in respect of only those employees who were in the clerical grade whose final seniority list was published vide Ext. M-12 dated 22-7-1982.

Ext. M-14 dated 11-2-82 is the office order regarding the cadre scheme for stock verifier of internal audit department. It shows the chain of promotion from stock verifier to Sr. Stock verifier grade-II and then to grade I in the cadre of stock verifier and it gives the eligibility for promotion, qualification, experience which is required for promotion in the different scales of pay of Stock verifier. Ext. M-3 dated 25-12-1982 which is equivalent to Ext. M15 is the final seniority list of stock verifier. The said final seniority list of stock verifier shows the names of Shri R. B. Sharma at Sl. No. 1, K. B. Jha at Sl. No. 2, and K. N. Ambastha at Sl. No. 5. This seniority list does not include the names of Guru Sewa Singh and P.B. Banerjee. Admittedly Shri P. B. Banerjee had never worked as stock verifier and as such there was no question of his name being included in the seniority list of Stock verifier. However, admittedly Shri Guru Sewa Singh had been appointed as stock verifier in 1975 and his name should have been in the list of stock verifier but his name is not included, the reasons for which I will explain hereafter. Ext. M-4 dated 6-4-84 is equivalent to Ext. W-2. These office orders will show that on the recommendation of the D.P.C. the three concerned workmen along with others were promoted to the posts of Sr. Stock verifier Grade-II with immediate effect. It will appear that the D.P.C. vide Ext. M-4 had considered the case of Stock verifier only for promotion to the post of Stock verifier Grade-II and it did not include the names from the seniority list of the clerical grade-I which was finally published vide Ext. M-12.

Admittedly Guru Sewa Singh was selected in 1975 as Stock Verifier. Ext. M-20 dated 17-8-77 is the application of Guru Sewa Singh Stock verifier for his transfer in the personnel department or Area office or at colliery level. Ext. M-23 dated 26/28-11-1977 is the office order which shows that Shri Guru Sewa Singh Stock verifier was transferred to Personnel directorate, Karmik Bhawan. It will thus appear that the concerned workman had himself applies for being transferred from the post of Stock verifier to the post of Clerk. The evidence of WW-1 and WW-2 who are the 2 concerned workmen will show that Shri P.B. Banerjee was working in Koyala Bhawan at the time when the D.P.C. was held in 1982. WW-1 has stated that Shri Banerjee was not Store Stock verifier. He has further stated that at that time Guru Sewa Singh was working as Clerk in Karmik Bhawan although his designation was of Stock verifier. He has stated that Shri Guru Sewa Singh was in the personnel department of Karmik Bhawan. He has clearly stated that Shri Banerjee and Shri Singh were in Clerical Grade and that they were not working as Stock verifier at the time of D.P.C. He has expressed his ignorance about the fact that Shri Guru Sewa Singh had given his option for the Clerical Grade. He has also admitted that in 1982-83 separate seniority list in respect of Stock verifier was published by the management. The evidence of WW-2 will also show that the promotion of the Stock verifier in 1984 was separately done. He has stated that the stock verifier was given scale of pay of Clerical Grade-I but it will appear from the evidence that the Stock verifier were not doing the job of Clerks. WW-2 has further stated that Shri P. B. Banerjee was not doing the job of Stock verifier and that Guru Sewa Singh had been transferred to Karmik Bhawan in 1982 which the D.P.C. was held in that year. He has stated that all the Stock verifier was under the internal audit department and that the job of stock verification was done under the instruction of the internal audit department of headquarters and in the Area under the instruction are Finance department. MW-1 has also stated that Shri P.B. Banerjee was along in the clerical cadre and Guru Sewa Singh who had come as Stock verifier in 1975 went back to the clerical cadre in 1977. He has further stated that as Guru Sewa Singh had come to the Clerical cadre his name was not published in the seniority list of Stock verifier and his name was included in the seniority list of Clerk Grade-I. He has also stated that as the concerned workmen were in a different cadre from the cadre of Guru Sewa Singh and P. B. Banerjee, the concerned workmen were never superseded by any junior or Shri Guru Sewa Singh or Shri P. B. Banerjee. From the evidence discussed above it is clear that Shri Guru Sewa Singh was transferred from Stock verifier to the Clerical Grade and Shri P.B. Banerjee was always in the Clerical Grade and their names were included in the final seniority list of Clerical Grade-I and as such their case were considered by the D.P.C. for promotion to the post of Special grade clerk. The evidence will further show that the concerned workman's cadre was separated from the cadre of clerks and the cadre of stock verifier was distinct from the cadre of the clerks. The case of the concerned workmen being of the cadre of stock verifier, their case was not considered by the D.P.C. while

considering the case of promotion from clerical Grade-I to Clerical special Grade. The evidence will further show that the cadre of the concerned workmen was different and their seniority list was also being maintained separately and as such the D.P.C. did not consider the case of the concerned workmen while considering the case of promotion of Clerical Grade-I to Clerk special grade and that when the case of the stock verifier was being considered for promotion to the post of Special grade by the D.P.C., the case of Clerk Grade-I was not considered for promotion along with the stock verifier. In my opinion the case of the concerned workmen who were in separate stock verifier's cadre could not has been considered for promotion to clerk special grade while the case of Clerical Grade-I was being considered for the post of Clerical special grade in 1982. The case of the concerned therefore could not be compared with the case of Shri Guru Sewa Singh and P.B. Banerjee of the Clerical Grade.

The management has produced the Award of CGIT No 3, Dhanbad passed in Ref. No. 6 of 1980 and the same is marked Ext. M-5 in this case. The award was passed in 1983. The point for decision in the said reference was regarding the interse seniority of the stock verifiers. The award of the Tribunal decided the question of interse seniority holding that the seniority of the stock verifier who were selected in 1975 was not to be considered from the date they reported for duty as Stock verifier but in accordance with the position declared by the D.P.C. Accordingly the seniority list of the stock verifier was subsequently corrected in accordance with the Award made in Ext. M-5 and accordingly the revised seniority list was published vide Ext. M-6 dated 1-12-83.

In the result, I hold that the demand of the Colliery Karamchari Sangh for promotion of the concerned workmen S/Shri K.B. Jha, K.N. Ambastha and R.B. Sharma Sr. Stock verifier of internal audit department of Headquarter, Administration of M/s. BCCL to special grade with effect from 3-11-82 is not justified and consequently they are entitled to no relief.

This is my Award.

[No. L-20012(332)/86-D, III(A) IR(Coal-I)]

I. N. SINHA, Presiding Officer

नई दिल्ली, 10 जनवरी, 1990

का. धा. 224-- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार सैन्य भारत कोलियरी कोल लिमिटेड की एनई कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अन्वय में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (नं. 2) धनबाद के पंचाद को प्रकाशित करती है।

New Delhi, the 10th January, 1990

S.O. 224.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central

Govt. Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Ena Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 97 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Ena Colliery of Messrs. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen : D. K. Verma, Advocate.

On behalf of the employers : Shri G. Prasad, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 6th December, 1989.

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (284)/86-D. III(A), dated, the Nil.

THE SCHEDULE

“Whether the action of the management of Ena Colliery of M/s. Bharat Coking Coal Limited, in denying promotion to Technical Grade-‘C’ to their workman, Shri Ram Sajan Ram, in January, 1986 was justified ? If not, to what relief is the said workman entitled ?”

The case of the workmen is that the concerned workman Shri Ram Sajan Ram was working as Fitter in Mechanical and Electrical section of Ena Colliery of M/s. BCCl. He was placed in Cat. VI as a Fitter since about 12 years. There were vacancies for the post of Asstt. Foreman in Technical and Supervisory Grade-C since long. On 26-7-84 Implementation instruction No. 30 of 1984 was circulated by JBCCI by which promotion to the post of Asstt. Foreman in Technical and Supervisory Grade-C was to be made from persons working in Cat. VI through D.P.C. It was decided by the standardisation committee that promotion to the higher grade in all discipline upto Technical and Supervisory Grade-B will be on the basis of seniority-cum-merit and promotion to Techni-

cal and Supervisory Grade-A shall be on the basis of merit-cum-seniority. The management constituted a D.P.C. for the promotion to the post of Supervisory Grade-C from the Electrical Fitter Cat. VI. The D.P.C. held the test on 25-11-85 in which 19 persons were selected for promotion. The concerned workman has passed Middle school examination. One Baijnath Ahir also appeared before the D.P.C. for promotion to the Technical and Supervisory Grade-C. Shri Baijnath Ahir was junior to the concerned workman. Shri Baijnath Ahir was working in Cat. VI for the last 6 years and was illiterate. The D.P.C. promoted Shri Baijnath Ahir to the post of Technical and supervisory Grade-C but did not recommend for the promotion of the concerned workman. The D.P.C. had shown favouritism in recommending for the promotion of Baijnath Ahir and had given him inflated 60 marks in the test whereas the DPC gave only 56 marks to the concerned workman. The concerned workman had the experience of work for more than 12 years whereas Shri Baijnath Ahir had the experience of only 3 years but even DPC recommended for the promotion of Baijnath Ahir. The promotion to the post of Asstt. Foreman in Technical and Supervisory Grade-C was to be effective from 1-1-86. On the above facts it is submitted that a discrimination has been made in not promoting the concerned workman to the post of Asstt. Foreman in Technical and Supervisory Grade-C. On the above facts it is prayed that the concerned workman be promoted to the post of Asstt. Foreman in Technical and Supervisory Grade-C in the scale of pay of Rs. 742-1422 with all benefits and seniority and his seniority be counted with effect from 1-1-86.

The case of the management is that the promotion is the management's function and cannot be claimed as a matter of right. The promotion of a workman from one grade to the higher grade depends on the length of service, his efficiency and other qualification for the post to which he seeks to be promoted. M/s. BCCl has introduced a cadre scheme promotional policy for each discipline. Unless the case of a workman is recommended by the D.P.C. and is approved by the competent authority, a workman cannot claim to be promoted. The case of the concerned workman was not recommended by the D.P.C. for his promotion to the post of Asstt. Foreman in Technical and Supervisory Grade-C although he had been given opportunity for being considered for his promotion by the D.P.C. The concerned workman has been working as a Mechanical Fitter in Cat. VI and is senior to Shri Baijnath Ahir in the same category. Under para 3-2 of the cadre scheme for Electrical and Mechanical discipline promotion to Grade-C is to be made on the basis of selection and merit from employees working in Cat. VI. The management did not examine the case for the departmental promotion of the concerned workman. His case was also considered for promotion to technical and Supervisory Grade-C but he was not found suitable by the D.P.C. The case of the concerned workman along with others was considered by the D.P.C. and the concerned workman was called for interview and tests along with others but he was not found suitable for promotion from Cat. VI to Technical and Supervisory Grade-C and therefore he was not promoted to the post of Asstt. Foreman in Technical and Supervisory Grade-C. Shri Baijnath Ahir secured 60 marks in the trade test before the D.P.C.

As per decision of the D.P.C. only those employees who secured 60 marks and above were recommended for promotion from Cat. VI to the post of Technical and Supervisory Grade-C. The promotion of Baijnath Ahir was made on the basis of merit-cum-seniority after taking into consideration his capability to perform the job to which he seeks to be promoted. The concerned workman had secured only 56 marks in the test and interview before the D.P.C. and as such he did not qualify for his promotion to Technical and Supervisory Grade-C. On the above facts it is submitted that the management was fully justified in not promoting the concerned workman to the Technical and Supervisory Grade-C.

The only point to be considered in this case is whether the management was justified in denying promotion to the concerned workman to Technical and Supervisory Grade-C with effect from January, 1986.

The management examined one witness in support of their case. The workmen did not examine any witness. The documents of the management are marked Ext. M-1 to M-9. No document was exhibited on behalf of the workmen.

Admittedly, promotion from Cat. VI to Technical and Supervisory Grade-C of E & M Personnel has to be made in accordance with the cadre scheme framed for the same. Ext. M-8 is the promotion channel of promotion of E&M personnel of Electricians/Fitter to Foreman incharge. The said promotional channel is provided in Implementation Instruction No. 30 dated 26-6-84 of JBCCI. It will appear that for promotion of a Fitter in Cat. VI to the post of Asstt. Foreman in Grade-C, he must have the qualification and experience is stated in it and the promotion is to be made through the D.P.C. after trade test. Implementation instruction No. 20 dated 20-6-84 is the cadre scheme for electrical and mechanical discipline employees. Para 3.2 of the said cadre scheme will show that selection for the posts upto Cat. V shall be on the basis of seniority-cum-merit and from Cat. V to VI on the basis of merit-cum-seniority. The selection to supervisory Grade-C shall be on the basis of selection on merit from employees in Cat. VI. Thus it will appear that the selection for promotion from Cat. VI to Technical and Supervisory Grade-C has to be made on the basis of merit from employees of Cat. VI. It will appear that the workmen were fundamentally wrong in stating that the promotion from Cat. VI to Technical and Supervisory Grade-C is to be made on the basis of seniority-cum-merit. The promotion has to be made from Cat. VI to Technical and Supervisory Grade-C on the basis of selection on merit and there is no question of seniority in the selection of Supervisory Gr.-C.

Admittedly, the management had constituted a D.P.C. for selection for the post of Technical and Supervisory Grade-C from Cat. VI employees. Ext. M-3 is the office order dated 20/21-9-85 by which a D.P.C. was constituted to consider the case of E&M Personnel from Cat. VI to the Asstt. Foreman in Technical and Supervisory Grade-C. The names of four persons constituting the D.P.C. is stated in Ext. M-3. One of the members of the D.P.C. Shri B. Guha was examined by the management as MW-1. It is admitted in the W.S. of the workmen that the concerned work-

man had appeared before the D.P.C. for consideration of his case for promotion to the post of Technical and Supervisory Grade-C. MW-1, one of the members of the D.P.C., has stated that the D.P.C. was held on 27-9-85 and that Ext. M-5 is the report of the D.P.C. bearing his signature. Ext. M-5 has an annexure A which shows the allotment of marks to the employees who had appeared before the D.P.C. MW-1 has stated that those who obtained 60 marks and above were given promotion and those who obtained less than 60 marks were not selected for promotion to the post of Technical and Supervisory Grade-C. He has stated that the details are given in Annexure to Ext. M-5. He has stated that the concerned workman was not promoted as he had obtained less than 60 marks and had actually obtained 56 marks only. He has denied that Baijnath Ahir and others had been given inflated marks and the concerned workman was knowingly given less than pass marks. From his cross-examination it will appear that the trade test was done through viva voce and there was no written paper regarding trade test. Ext. M-5 will show the different heads under which marks were allotted and it is also stated that the qualifying marks for promotion to the next higher grade was fixed by the D.P.C. as 60 marks out of 90 marks. It is stated that in accordance with the criteria as mentioned each eligible candidate had been examined by the D.P.C. which can be seen in Annexure-A. The Annexure-A of Ext. M-5 shows that the concerned workman had obtained only 56 marks and Shri Baijnath Ahir had obtained 60 marks and as such the name of Baijnath Ahir was recommended for promotion to Technical and Supervisory Grade-C and that as the concerned workman had obtained only 56 marks his name was not recommended for promotion to the post of Technical and Supervisory Grade-C. It has already been seen that the promotion to Technical and Supervisory Grade-C is to be made on the basis of selection on merit and as the concerned workman was not fit for promotion on merit he was not selected. The evidence discussed above will show that the D.P.C. had selected Baijnath Ahir on the basis of merit as he had obtained 60 marks and that the concerned workman was not selected for promotion to Technical and Supervisory Grade-C as he had not qualified on merit.

There is absolutely nothing on the record to show that the D.P.C. was in any way interested in promoting Baijnath Ahir or that they were bent upon declaring the concerned workman unfit for being promoted to Technical and Supervisory Grade-C. Even in the W.S. only vague allegation have been made against the members of the D.P.C. without disclosing any specific reason to show that they were either prejudiced or interested in not promoting the concerned workmen.

Taking the entire facts into consideration I hold that the management was quite justified in not promoting the concerned workman to Technical and Supervisory Grade-C.

In the result, I hold that the action of the management of Ena Colliery of M/s. BCCI in denying promotion to the concerned workman Sri Ram Sajan Ram to Technical and Supervisory Grade-C with effect

from January, 1986 is justified and consequently the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(284)|86-D.III(A)|IR(Coal)-I]

का. प्र. 225 - दानबाद विवाद प्रतिनिधित्व, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मैसर्स भारत कोकिंग कोल लि. को तथा तिसरा कोलियरी के अवनवत से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुसूच में निहित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है ।

S.O. 225.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of North Tisra Colliery of M/s. Bharat Coking Coal Ltd., and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.
Reference No. 256 of 1987

In the matter of an industrial dispute under
Section 10(1) (d) of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of
North Tisra Colliery of M/s. BCCL and
their workmen.

APPEARANCES :

On behalf of the workmen : G. D. Pandey,
Vice-President, RCMS Union.

On behalf of the employers : Shri A. K. Rao,
P.M.

STATE : Bihar INDUSTRY : Coal

Dated, Dhanbad, the 5th December, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act. 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (171)|86-D.IV(B) dated, the 15th September, 1987.

THE SCHEDULE

“Whether the action of the Management of
North Tisra Colliery of M/s. BCCL in terminating the services of Sri Ram Bachan

Tiwari simply because his name has been typed as Ram Bachan Singh in the list furnished by the Rashtriya Colliery Mazdoor Sangh after he was allowed to resume duty as per the settlement on 28-9-82 is justified ? If not, to what relief the workman is entitled ?”

In this case both the parties did not file their respective W. S. documents. Ultimately both the parties appeared before me and filed a petition of compromise when the case was fixed for filling W. S. I heard both the parties on the said petition of compromise and I do find that the terms of compromise are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer
[No. L-24012 (171)|86-D.IV(B)|IR (Coal-I)]
K. J. DYVA PRASAD, Desk Officer

BEFORE THE PRESIDING OFFICER CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2
AT DHANBAD

Reference No. 256|87

Employers in relation to the management of
North Tisra Colliery.

AND

Their workman.

Petition of compromise

The humble petition on behalf of the parties most respectfully shewth :—

1. That the Central Government by notification No. L-24012(171)|86-D-IV(B) dated 15-9-87 has been pleased to refer the present dispute for adjudication on the issue contained in the schedule of reference which is reproduced below :—

THE SCHEDULE

“Whether the action of the management of North Tisra Colliery of M/s. BCCL in terminating the service of Shri Ram Bachan Tiwari, simply because his name has been typed as Ram Bachan Singh in the list furnished by the Rashtriya Colliery Mazdoor Sangh after he was allowed to resume duty as per the settlement on 23-9-82 is justified ? If not to what relief the workman is entitled ?”

2. That the above dispute has been amicably settled between the parties on the following terms :—

Terms of Settlement

(a) That the concerned workman Sri Ram Bachan Tiwari will be allowed to resume

his duty within 30 days from the date of the settlement. The concerned workman must report for his duty within 30 days from the date of this settlement.

- (b) That the concerned workman will not claim any back wages or benefits from the date of his termination of service till the date of his resumption of duty. His continuity of service will be maintained.
- (c) That the concerned workman will produce two copies of the photographs duly identified by the Mukhiya and B.D.O. and the Secretary of the sponsoring Union in proof of his genuinity at the time of reporting for his duty and also produce Identity Card if issued to him by the management. If he fails to report for duty within 30 days with the documents of identification, he will not be allowed to resume his duty in future and he forfeits his claim whatsoever.

3. That in view of the above settlement there remains nothing to be adjudicated.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the settlement.

For the Workmen

For the Employers

- | | |
|---|--|
| 1. (G. D. Penday)
Vice-President,
Rashtriya Colliery
Maz-door Sangh. | 1. (S. K. Sen)
General Manager,
Lodna Area. |
| 2. (Lalan Choubey)
President,
Rashtriya Colliery
Maz-door Sangh | 2. (P. K. Sharma)
Agent,
North Tisra Colliery. |
| 3. (A. K. Rao)
Personnel Manager,
Lodna Area | |

Witnesses.

1. Ram Bachan Tewari
Lachman

नई दिल्ली, 11 जनवरी, 1990

का. प्रा. 226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तमिलनाडु मर्कण्टाइल बैंक हैदराबाद के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचाट को प्रकाशित करती है।

New Delhi, the 11th January, 1990

S.O. 226.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the annexure, in the industrial dispute between the employers in relations to the management of Tamil Nadu Mercantile Bank and their workmen.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
ANDHRA PRADESH AT HYDERABAD

PRESENT :

Sri D.J.J. Jagannadha Raju, B.A.,B.L., Presiding Officer.

Dated, the 15th November, 1988

Industrial Dispute No. 79 of 1988

BETWEEN :

The Workmen of Tamilnadu Mercantile Bank,
Nellore (A.P.).

AND

The Management of Tamilnadu Mercantile
Bank, Nellore (A.P.).

APPEARANCES :

None for the Workmen.

Sri L. K. Srinivasa Rao, Advocate for the
Management (not present).

AWARD

The Government of India, Ministry of Labour, New Delhi, by its Order No. L-12012/38/88-D.IV (A), dated 5-8-1988 have referred to this Industrial Tribunal, Hyderabad an industrial dispute existing between the Workmen of Tamilnadu Mercantile Bank, Nellore and their employers by clause (d) of sub-section (i) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) for adjudication with the following issues framed and to submit the Award of this Tribunal within a period of three months :—

THE SCHEDULE

“Whether the action of the management of M/s. Tamilnadu Mercantile Bank Ltd., in terminating the services of Shri R. Sunder, Sub-staff with effect from 17-9-1986 on the ground that they do not find him suitable for the post during the period of probation as per Clause-1 of the Appointment Order dated 24-4-1985 is justified ?

If not to what relief Shri Sunder is entitled to ?”

Soon after the receipt of the Order, it was registered as Industrial Dispute No. 79 of 1988 on the file of this Tribunal and notices were issued to the concerned parties with a direction to the Workmen to file

their Claims Statement on or before 12-9-1988. The notice of this Tribunal was duly served on all the parties concerned. On 12-9-1988 when the case was called at the Bench, Sri L. K. Srinivasa Rao, Advocate filed Vakalat on behalf of the Managements namely Respondent No. 1 and 2. Workmen were called absent and the dispute was adjourned to 14-10-88 for filing the Claims Statement. On 14-10-1988 Management was represented by its Advocate and there was no one to represent the workmen. Workmen were called absent and were set-exparte and the dispute was adjourned to 14-11-1988 for Counter of Respondent No. 1 and 2.

14-11-1988 was declared Public Holiday and the case was called on 15-11-1988. On 15-11-1988 when the dispute was called there was no one to represent both parties. No counter is filed by the Management. It looks as if neither the worker nor the management is interested in pursuing the matter.

I have carefully persued the records available. From a careful perusal of the record it is seen the Workmen were served properly and they ought to have made their appearance and contested the matter. Similarly the management has also not evinced any interest and did not file any counter. In the circumstances of this dispute, I feel that neither of the parties are interested in prosecuting the matter, and the Tribunal is helpless. I held that they are not interested in contesting the dispute. I, therefore, terminate the reference and held that the workmen are not entitled to any relief in this industrial dispute.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 15th day of November, 1988.

Sri D. J. JAGANNADHA RAJU, Industrial Tribunal

[No. L-12012|30|88-D.IV(A)|IR(B)-I]

Appendix of Evidence

NIL

SRI D. J. JAGANNADHA RAJU, Industrial tribunal,

का. आ. 227 :—भारतीय जीवन बीमा निगम के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच औद्योगिक विवाद को राष्ट्रीय औद्योगिक अधिकरण जिसका मुख्यालय बंबई में है, को न्यायनिर्णयन के लिए निर्देशित किया गया था और इसके पंचाट को दिनांक पहली अक्टूबर, 1988 के का. आ. 2975 के रूप में भारत के राजपत्र भाग-II खंड 3, उपखंड (ii) में प्रकाशित किया गया था ;

और केन्द्रीय सरकार के ध्यान में प्रह जाया गया है कि उक्त राष्ट्रीय औद्योगिक अधिकरण के संबंध में समक्ष कतिपय आवेदन खंडित पड़े हैं जिसका निपटारा किया जाता है ;

और केन्द्रीय सरकार की राय है कि उक्त आवेदनों को राष्ट्रीय औद्योगिक अधिकरण द्वारा निपटारा जाए ;

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7-अ द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एक राष्ट्रीय औद्योगिक अधिकरण गठित करती है जिसका मुख्यालय बंबई में होगा और न्यायमूर्ति एस. एन. खत्री को इसका पीठासीनकारी नियुक्त करती है। उक्त राष्ट्रीय औद्योगिक अधिकरण उक्त

अधिनियम को धारा 10 को उपधारा (2-क) के अनुसार उक्त सदर्भ में लब्धित पड़े सभी आवेदनों के संबंध में अपना पंचाट छह सप्ताहों के अंदर देगा।

[सं.एन-17011/2/83-रा-IV(ए) /आई. आर. (बी.)-I]

E.O. 227.—Whereas an industrial dispute between the employers in relation to the management of the Life Insurance Corporation of India and their workmen was referred for adjudication to the National Industrial Tribunal, with its Headquarters at Bombay, and its award was published in Part II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 1st October, 1988 as S.O. 2975.

And whereas it has been brought to the notice of the Central Government that certain applications were pending before the said National Industrial Tribunal which are pending disposal;

And whereas the Central Government is of the opinion that the said applications may be disposed of by a National Industrial Tribunal;

Now, therefore, in exercise of the powers conferred by Section 7-B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a National Industrial Tribunal, with its Headquarters at Bombay and Justice S. N. Khatri as its Presiding Officer. The said National Industrial Tribunal shall submit its award on all the pending application in the said reference within a period of six months in accordance with sub-section (2A) of Section 10 of the said Act.

[No. L-17011|2|83-D.IV(A)|IR(B)-I]

का. आ. 228 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्तव्य वेणु बैंक लिमिटेड गंतूर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद को प्रकाशित करती है।

S.O. 228.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the annexure, in the industrial dispute between the employers in relation to the management of Karur Vysya Bank Ltd., Guntur and their workman.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL
AT HYDERABAD

PRESENT :

Sri C. Ramj Reddy, B.Sc., B.L., Industrial Tribunal.

Dated : 4th October, 1989

INDUSTRIAL DISPUTE NO 46 OF 1986.

BETWEEN :

The Workman of Karur Vysya Bank Limited,
Guntur.

AND

The Management of Karur Vysya Bank, Limited,
Guntur

APPEARANCES :

Sarvasri P. Hanumanth Prasad and M. Nagesh-
wara Rao, Advocates for the Workman.

Sarvasri A. Krishna Murthy, P. Nageshwar Sree,
Amarnath Reddy, N. V. Ramanujam and
P. S. V. Narasimha Rao, Advocates for the
Management.

AWARD

The Government of India, Ministry of Labour
by its Order No. L-12012/16/82-D.IV(A) Pt. dated
29th September, 1986 referred the following dispute
under Sections 10(1)(d) and (2A) of the Industrial
Disputes Act, 1947 between the employers in relation
to the Management of Karur Vysya Bank Limited,
Guntur and their workman Sri G. Srinivasa Rao to
this Tribunal for adjudication :—

“Whether the action of the Management of Karur
Vysya Bank Limited, Guntur in dismissing
Sri G. Srinivasa Rao, Peon from service with
effect from 26-2-1982 is justified? If not,
to what relief is the workman concerned
entitled?”

This reference was registered as Industrial Dispute
No. 46 of 1986 and notices were issued to both the
parties.

2. The gist of the claim statement is that from
12-9-1981 the charge sheeted employee G. Srinivasa
Rao was on leave and he claims that he was on leave
on 5-10-1981 also. He claims that on 5-10-1981 he
was woken up at about 11.00 P.M. and taken from
his house to the house of the Manager and there the
Manager and other staff members informed that there
was a shortage of cash of Rs. 20,000.00 and that
they suspected that he took the cash as he came to
the Bank on that day. Then the Manager informed
him that because of suspicion against him, we have
to give Police complaint unless he made good the
shortage. He claims that under threats he was made
to part cash of Rs. 12,500.00 available in the house
and also gold ornaments of his wife. He claims that
he was taken to the Manager's House again and
stating that no disciplinary action would be taken
against him and no complaint would be given to the
Police, he was made to sign in certain blank white
papers. On the next day his brother Ram Mohan
Rao went to the Manager's house to enquire as to
what happened and on being informed about the short-
age Ram Mohan Rao was made to handover cash
and F.D. receipts, jewellery was returned. Subse-
quently after arrival of the Personnel Officer again
the matters were discussed and then a charge sheet
was issued and then disciplinary enquiry was con-
ducted. After he submitted his explanation for the
charge sheet, the enquiry was conducted, the proceed-
ings of the enquiry and the order of the Appellate
Authority clearly indicates that the Management was
bent upon punishing him even before the charges are
proved. The enquiry is a make believe affair. The

Petitioner attended the enquiry on a few days at the
beginning. He requested for availing the services of
an Advocate to defend him in the enquiry but he was
not permitted to avail the services of an Advocate.
Then he did not participate in the enquiry and he
did not cross examine the witness. The enquiry con-
ducted is not in accordance with principles of natural
justice and he did not have adequate opportunity to
defend himself. Subsequently he was dismissed on
the basis of the enquiry and the Enquiry Officers
report. Even the appeal filed by him was dismissed.
Then he raised the present industrial dispute.

3. The brief facts of the counter are the various
allegations in the claim statement are false. The
charge sheeted employee fully admitted his guilt and
made good the cash immediately on 5-10-1981 itself.
He made a clean breast of the whole thing. He
stole Rs. 20,000.00 and redeemed jewellery and then
admitting his mistake. He gave confessional state-
ment on the night of 5-10-1981. It is he who handed
over Rs. 12,000.00 and the jewellery from Navayuga
Hotel. An enquiry was conducted in strict accordance
with the procedure laid down by Bipartite Settlement
and in accordance with the principles of natural jus-
tice. Several witnesses were examined. When the
request of the petitioner to engage the services of the
Lawyer was turned down as per law, he did not parti-
cipate in the enquiry. The enquiry has been con-
ducted in a free and fair manner and there is over-
whelming evidence to prove the guilt of the charge
sheeted employee. The enquiry is perfectly valid and
the Management is perfectly justified in dismissing the
employee.

4. It may be stated that this Tribunal took up the
validity of the domestic enquiry as preliminary point
and passed orders on 28-11-1988, finding that the
enquiry has been conducted in strict in accordance
with paragraph 19 of the Bipartite Settlement and
that it is also conducted in accordance with the prin-
ciples of natural justice and that the enquiry is not
in any way vitiated and that it is perfectly valid.

5. The point for consideration is whether the
charges framed against the workman are proved and
if so whether the punishment awarded to the delin-
quent employee is disproportionate to the gravity of
the charge.

6. No oral evidence were adduced by either party.
However, the Management marked Exs. M1 to M20
while the workman marked Exs. W1 to W3 with con-
sent of the parties, for consideration on the validity
of the domestic enquiry.

7. The gross misconduct committed by the charge
sheeted employee is under three heads :—

- (i) Wilful damage to the property of the bank;
- (ii) doing an act prejudicial to the interest of
the bank;
- (iii) committing the offence of the theft and mis-
appropriation.

The above is evident from the charge sheet Ex. M1.

8. The Management examined ten witnesses in all
during the enquiry proceedings which is marked as

Ex. M12. The Enquiry Officer gave numbers to the management witnesses as M.W1 to M.W10. For the sake of convenience, the charge sheeted employee Sri G. S. Srinivasa Rao will be referred to as C.S.E. M.W. 1 is Sri K. G. Vaidyanathan who is the Personnel Officer of the Bank. He stated before the Enquiry Officer that on receipt of the information of cash shortage of Rs. 20,000.00 at the Guntur Branch, he went to Guntur for on the spot study of the incident and then he met Branch Manager. He further deposed that Sri Ram Mohan Rao who is brother of charge sheeted employee met him and told him that his brother G. Srinivasa Rao is missing from his house and he (Ram Mohan Rao) requested him (M.W1) not to give any police complaint. He further deposed that on 10-10-1981 Sri Ram Mohan Rao called on him and requested him again not to give any police report, that at 6.00 P.M. on that day Sri Ram Mohan Rao, the wife of Ramamohana Rao, the wife of C.S.E. and the father-in-law of C.S.E. again met him and requested him not to give any police complaint. Further he stated that at 7.30 P.M. on that day C.S.E. came to the Branch accompanied by a relative, that himself (M.W1) Branch Manager (S. Nagarajan) and one Sri Ramachandra Rao, who is an Executive Member were present and that C.S.E. clearly confessed the taking of two sections of Rs. 100.00 notes in the cash cabin without the knowledge of Cashier at about 11.00 a.m. and that C.S.E. also narrated the subsequent events leading to the recovery of cash and gold jewellery from him and the making good of the entire shortage of the amount taken by him.

9. The second witness is S. Nagarajan who is the Manager of the Guntur Branch. He stated that after attending to his work outside the office, he returned to the office at 6.45 p.m. on 5-10-1981, that he was told that there was cash shortage of Rs. 20,000.00, that he came to know that Sri G. Srinivasa Rao, Sub-Staff who was the cash peon on that day had left the office at about 4.00 p.m. that they entertained suspicion against G. Srinivasa Rao, that he sent word to the charge sheeted employee through Sri Ravi Peon of the Branch to come to the Branch immediately, that he was told that charge sheeted employee was not available at the place, that thereafter himself, Sri Raghu, Clerk, Sri Subba Rao another Clerk and Sri Ravi Peon went to the house of C.S.E. and that the sent Ravi to find out the charge sheeted employee, that Ravi came and reported that he (charge sheeted employee) was coming in a cycle rickshaw near the Railway over bridge, that he immediately went on the scooter and brought the charge sheeted employee to his house. Further he stated that charge sheeted employee confessed that he had appropriated a sum of Rs. 20,000.00 all in hundred rupee currencies from the Bank and he had kept the same at his friend's house at Ponnur. He further stated that charge sheeted employee gave a letter marked as Ex. M3 to the same effect and requested him not to give any punishment to him, and it was then 11.30 p.m. on 5-10-1981. Further he stated that a taxi was brought for going to Ponnur and that the charge sheeted employee informed them that he had kept the amount in the Lodge near Arundelnet and not at Ponnur and that thereafter himself, Subba Rao, Raghu and Ravi

accompanied the charge sheeted employee to Navajug Hotel, that charge sheeted employee took Subba Rao only inside the hotel and handed over the bag containing some cash and jewels and thereafter they all returned to his house and they counted the cash and found a sum of Rs. 12,500.00 all in hundred rupees currency and jewels and that the charge sheeted employee gave a confessional statement marked as M-4 narrating the same and that the charge sheeted employee requested him not to give any police complaint stating that he will pay the balance of Rs. 7,500.00 on the next day and take back the jewels. Further he stated that on the next day at 10.30 a.m. Ram Mohan Rao who is the brother of the charge sheeted employee, wife of Ram Mohan Rao and wife of the charge sheeted employee came to the Bank and handed over the cash of Rs. 3,950.00 and F.D.R's for Rs. 9,500.00 for raising a loan to the extent of Rs. 6,050.00, that 6-10-1981 was a holiday for the bank that they came again to the Bank on 7-10-1981 and represented that the amount of Rs. 20,000.00 may be adjusted from the Rs. 10,000.00 out of the cash of Rs. 12,500.00 handed over by charge sheeted employee, the loan of Rs. 6050.00 raised by the deposit of Fixed Deposit and the cash of Rs. 3,950.00 paid by them on 6-10-1981. Further he deposed that on 10-10-1981 Sri Ram Mohan Rao, his wife and the wife of charge sheeted employee and the father-in-law of charge sheeted employee came to the Branch and met Personnel Officer Sri K. G. Vaidyanathan that at 7.30 P.M. on that day the charge sheeted employee also met the Personnel Officer and confessed the offence and narrated the events in his presence and in the presence of Ramachandra Rao and Personnel Officer.

10. As already observed Sri Vaidyanathan (M.W.1) supported the version of the Manager Sri Nagarajan in this regard. (1) Sri Ravi Peon, (2) Sri Raghu, Clerk; and (3) Sri Gopal Rao another Clerk was examined as M.W6, M.W7, M.W9 respectively before the Enquiry Officer and they collaborated the version of the Manager Sri Nagarajan (M.W2) in all material particulars. The other witnesses namely (1) Shri Diwakara, Officer, Guntur Branch (2) Sri B. Srinivasan, Clerk, (3) Sri Guruprasad, Clerk; and (1) Sri A. N. Chakravarthy, Clerk who were examined as M.W3, M.W4, M.W5 and M.W10 respectively before the Enquiry Officer spoke to the fact of charge sheeted employee working as Cash Peon on 5-10-1981 and about the learning of the confession made by the charge sheeted employee before the Manager and others with regard to the offence in question. There is practically no evidence on the side of the charge sheeted employee to rebut the version put forth by the Management and to support the case set up by him. The only argument advanced by the learned counsel for the charge sheeted employee is that the Attendance Register Ex. M20 goes to show that charge sheeted employee was absent from 12-9-1981 to 30-9-1981 and that he did not even attend the office from 1st to 5th October, 1981, that if he had attended the office from 1st to 5th October, 1981 he would have signed in the attendance Register that the Attendance Register for the month of October, 1981 does not contain the signature of the charge sheeted employee showing his attendance from 1st to 8th October, 1981, that it is a strong circumstance to

doubt the version of the managements witness in regard to the working of C.S.E. on 5-10-1981, as spoken to by Management witness. It is significant to note that there are no other circumstance to corroborate the above contention of the charge sheeted employee. He is only a Peon working in the Branch. It is quite possible that is they fail to mark the attendance in the Attendance Register on some days; Here is a case when there is the positive evidence of the entire staff of the Branch to the effect that the charge sheeted employee did attend the Bank on 5-10-1981 and that he went away from the Bank at 4.00 p.m. There are practically no circumstances to doubt the statements of management witness in this regard. Further there is the confession made by the charge sheeted employee before the Branch Manager and other members of the staff as referred to above, admitting the commitment of the theft. Further the statements of managements of the witness goes to show that the substantial amount involved. In the occurrence was produced by C.S.E. Thus there is overwhelming evidence to prove the gross misconduct of the charge sheeted employee for the three misconducts alleged against him and I see no reason to differ with the findings of the Enquiry Officer holding the charge sheeted employee guilty of the charges framed against him.

11. The next aspect to be considered in the nature of punishment to be awarded to the charge sheeted employee and whether the punishment of dismissal awarded to the charge sheeted employee is proportionate or not to the gravity of the offence. In the decision of the Madras High Court rendered in WP. No. 6752/79 dt. 3-3-1986 it is held that the workman who is found guilty of committing theft does not deserve any sympathy and that there is very little scope for any generosity to be shown or to take into existence minor punishments for such derelictions that committing theft had been considered as a penal offence in the interest of society to maintain law and order in the country and that the punishment of dismissal is proportionate to the gravity of misconduct. Admittedly the charge sheeted employee is a Peon working in the Bank which is a financial institutions. The employees working in the Banks are expected to maintain the highest integrity. In my view the offence committed by the charge sheeted employee is very grave and he deserves the punishment of dismissal as imposed by the Management.

12. In the result the action of the Management of Karur Vysya Bank Limited, Guntur, in dismissing Sri G. Srinivasa Rao, Peon from service with effect from 26-2-1982 is justified and the charge sheeted employee is not entitled to any relief.

Award passed accordingly.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 4th day of October, 1989.

C. RAMI REDDY, Industrial Tribunal
[No. L-12012/16/82-D.IV(A) Pt.[IR(B)-I]

Appendix of Evidence

Witnesses Examined
for the Management
NIL

Witnesses Examined
for the Workmen
NIL

Documents marked for the Management :

- | | |
|------------|---|
| Ex.M1 | Charge Sheet dt. 10-10-81 issued to G.Srinivasa |
| By consent | Rao by the personnel Officer, Karur Vysya Bank Limited. |
| Ex.M2 | Explanation to the Charge Sheet dt.26-10-81 |
| By consent | submitted by G.Srinivasa Rao to the Personnel Officer, Karur Vysya Bank Limited, Centra Office, Karur, Karnataka State. |
| EX.M3 | Letter dt. 5-10-81 of G.Srinivasa Rao to the |
| By consent | Manager, Karur Vysya Bank. |
| Ex.M4 | Letter dt.5-10-81 of G. Srinivasa Rao to the |
| By consent | Manager Karur Vysya Bank, Guntur. |
| Ex.M5 | Memo dt.23-11-81 issued to G.Ram Mohan |
| By consent | Rao by the Manager, Karur Vysya Bank Limited, Guntur. |
| Ex.M6 | Postal acknowledgement dt. 26-11-81 from G. |
| By consent | Ram Mohan Rao to the Karur Vysya Bank, Eluru Bazar, Guntur. |
| Ex.M7 | Postal acknowledgement dt. 26-11-81 from G. |
| By consent | Srinivasa Rao to the Karur Vysya Bank, Eluru Bazar, Guntur. |
| Ex.M8 | Postal acknowledgement dt. 26-11-81 from Smt. |
| By consent | Rajasulochana to the Karur Vysya Bank, Eluru Bazar, Guntur. |
| Ex.M9 | Enquiry notice dt. 17-11-81 issued to G.Sri- |
| By consent | nivasa Rao by the Enquiry Officer. |
| Ex.M10 | Letter dt. 29-11-82 from Government of India |
| By consent | to General Manager, the Karur Vysya Bank Limited Jawahar Bazar, Karur with regard to refusal to refer this dispute to the Industrial Tribunal for adjudication. |
| Ex.M11 | Order No.L-12012/16/82-D.IV(A)Pt. dt. 29-9-86 |
| By consent | from Government of India, Ministry of Labour, New Delhi, to Industrial Tribunal, Hyderabad for adjudication. |
| Ex.M12 | One booklet containing enquiry proceedings, |
| By consent | findings, having regarding proposed punishment, final orders and the orders of the appellate authority. |
| Ex.M13 | Letter dt.6-2-82 to G. Srinivasa Rao regarding |
| consent | proposed punishment addressed by Enquiry Officer. |
| Ex.M14 | Letter dt.18-2-82 addressed by Enquiry Officer |
| By consent | to G.Srinivasa Rao with regard to adjournment of proposed punishment. |
| Ex.M15 | Dismissal Order dt.27-2-82 issued to G. Sri- |
| By consent | nivasa Rao by the Asst. General Manager, Karur Vysya Bank. |
| Ex.M16 | Photos, a copy of the Bypartite Settlement dt. |

By consent 21-3-80 with regard to disciplinary action and procedure therefor—Panel of Persons empowered to hold enquiry and take disciplinary action and to pass original orders against the workmen Employees Karur Bank.

Ex.M17 Photostat copy of the notice appointing certain persons as disciplinary authority.

Ex.M18 Proceedings of the appellate authority 28-3-82
By consent

Ex.119 Medical Certificate dt. 11-10-81 issued to G.Sri. nivas Rao by Dr. G.Satyanarayana, Regd No. 13021, Naidupet 1st Line, Guntur.

Ex.M20 Attendance Register of Karur Vysya Bank Limited, Guntur.
By consent Documents marked for the Workmen :

Ex.W1 Photostat copy of the letter addressed by Manager Karur Vysya Bank Limited, Guntur to G.Srinivasa Rao with regard to the Salary for the month of October 1981 for 4 days.

Ex.W2 Photostat copy of the Pay Order for Rs. 32-72
By consent Ps.

Ex.W3 Photostat copy of the charge sheet dt. 10-10-81
By consent issued to G. Srinivasa Rao by the Personnel Officer, Karur Vysya Bank Limited.

C. RAMI REDDY, Industrial Tribunal

का. घा. 229 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई के पंचपर को प्रकाशित करती है।

S.O. 229.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the annexure, in the industrial dispute between the employers in relation to the management Reserve Bank of India and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

PRESENT :

Mr. Justice M. S. Jamdar, Presiding Officer.
Reference No. CGIT-25 of 1987

PARTIES :

Employers in relation to the management of Reserve Bank of India, Bombay,

AND

Their workman.

APPEARANCES :

For the Management—Mr. S. R. Hegde, Deputy Legal Adviser.

For the Workman—N. K. Surya Kumar, Reserve Bank Workers' Organisation.

94 GI/90—9

INDUSTRY : Banking.

STATE : Maharashtra.

Bombay, the 9th day of February, 1988

AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act has referred the following dispute to this Tribunal for adjudication :

“Whether there existed separate seniority list of typists for Byculla Office and for Bombay Regional Office of Department of Banking Operations & Development of Reserve Bank of India, Bombay or was it a combined one; it separate one, whether proposed reversion of Smt. S. S. Thosar from the post of Head Typist to Typist is justified ? If not, what relief the workman is entitled to ?”

2. The workman Smt. S. S. Thosar is working as a typist in the Byculla Office of the Reserve Bank of India since 12th November, 1964. This office was opened in the year 1963. The said office started functioning w.e.f. 10th September, 1963. Simultaneously it was decided to link the Bombay Regional Office of the Department of Banking Operations and Development (BRO of DBOD) to the Byculla Office and was to function in the same way as other regional office at Calcutta, Madras etc. under the overall administrative charge of the Manager as mentioned in the letter exhibit M-4 dated 10th August, 1963. The said office started functioning with effect from 10th September, 1963. Simultaneously it was decided to link the Bombay Regional Office of the Department of Banking Operations and Development Accountant informed the Chief Officer, Department of Banking Operations the scheme of arrangement about the staff allocated to the Bombay Regional Office of the DBOD.

3. By the settlement dated 12th September, 1984 between the Bank and All India Reserve Bank Employees Association it was agreed that a senior typist be posted as head typist in typing pools having a complement of 5 or more typists and paid an allowance of Rs. 65 per month. At that time there existed three typing pools under the administrative control of the Byculla Office, two in the Byculla Office itself and one in BRO of DBOD. As Shri G. S. Vajirani and Smt. S. S. Thosar were the seniormost typists in the Byculla Office they were promoted as head typists for the two typing pools in the Byculla Office vide office order No. 478/84-85, dated 16th February, 1985. However the appointment as head typist of Smt. Thosar was sought to be cancelled on the ground that on the basis of overall seniority Shri G. S. Rane who was working as a typist in BRO of DBOD was senior both to Shri Vajirani as well as Smt. Thosar while Smt. N. L. Bhiwandkar, also working in BRO of DBOD was senior to Smt. Thosar and it was proposed to post Smt. Bhiwandkar as head typist in one of the pools in Byculla Office and revert Smt. Thosar as typist. This decision was stayed during the conciliation proceedings in respect of the industrial dispute raised by the Union but was implemented vide order dated 15th July, 1986, after the conciliation proceedings failed.

4. According to the workman the Bombay Regional Office of DBOD, which was accommodated in the Byculla Office, though placed under the administrative control of the Manager of the Byculla Office was to function as an independent unit with its own separate seniority lists in respect of the staff attached to it, and accordingly the Byculla Office always maintained separate seniority lists of typists of Byculla Office and BRO of DBOD and such lists were periodically sent to the Central Office of Reserve Bank of India. The typists of the Byculla Office and the typists of BRO of DBOD were never in one common pool of seniority. Moreover in terms of central office letter No. D.A. No. St. (Sec. I) 11711/52C(1)-83/84 dated 30th March, 1984 the sanctioned strength of staff attached to the Bombay Regional Office of the DBOD were transferred to the Central Department of Banking Operations and Development w.e.f. 15th May, 1984 and even the Administrative Control which the Byculla Office had over BRO of DBOD has ceased to exist from that date. The workman therefore was entitled to the post of head typist on the basis of her seniority in the Byculla Office.

5. The Bank denied that there were separate seniority lists for typists working in BRO of DBOD and for typists working in Byculla Office and maintained that after the opening of the Byculla Office and the separation of BRO of DBOD from the Central Office of DBOD and its linkage to Byculla Office, a common seniority list of typists and stenographers working in BRO of DBOD and Byculla Office is being maintained. According to the Bank the letter dated 12th August, 1963 did not deal with the determination of seniority of the staff allocated to BRO of DBOD as it was not the purpose of the said letter, which related only to the question of allocation of staff of central office of DBOD in an equitable manner so that the staff retained in the central office and the staff allocated to the regional office continued to have fairly equal promotional opportunities. It is the case of the bank that while making the appointments of head typists, by mistake, the Byculla Office omitted to take into consideration the typing pool of BRO of DBOD as also the seniority of Shri G. S. Rane and Smt. N. L. Bhivandkar who were working in that office. By the impugned order this mistake is corrected and Smt. Bhivandkar who is senior to Smt. Thosar is posted as Head Typist in the place of Smt. Thosar reverting the latter to her original post as typist in the Byculla Office.

6. The sole basis on which Smt. Thosar was demoted from the post of Head Typist, to which she was promoted as per her seniority amongst the typists attached to the Byculla Office, was that after the opening of the Byculla Office and the separation of BRO of DBOD from the Central Office of DBOD and its linkage to Byculla Office, a common seniority list of typists and stenographers working in BRO of DBOD and Byculla Office was maintained and as per this list Smt. Thosar was found to be junior to Smt. Bhivandkar who was then working in BRO of DBOD. This basis itself is wrong. Even though after the separation of BRO of DBOD from the central office the staff attached to the BRO was placed under the administrative control of the Byculla Office a common seniority list of typists attached to BRO of DBOD and the typists attached to the Byculla Office was neither expected to be maintained nor such a list was maintained by the Byculla Office. That the seniority of the staff attached to the BRO of DBOD was to be kept separate is clear from the scheme of arrangement mentioned in exhibit W-2, dated 12th October, 1963 addressed by the Deputy Chief Accountant, Central Office of Reserve Bank of India to the Chief Officer of the Department of Banking Operations of the Bank. The Deputy Chief Accountant stated in the said letter as follows:—

"As you are aware, it has been decided that your Department at Bombay should be split up into Central Office and Regional Office and as in the cases of the Regional Offices at the other centres the local Regional Office which will be accommodated in the Byculla Office premises should for administrative purposes function as an independent unit with its own separate seniority list under the administrative control of the Manager at that office. The initial composition of the different cadres in the local Regional Office at Byculla should be supplied by the Central Department of Banking Operations on an equitable basis in the proportion of the staff requirement of that office to the total present strength of the Central Department of Banking Operations under each cadre. For example, if there are 400 posts in the Central Department of Banking Operations and 100 have to be supplied to the establishment of the local Regional Office, every 4th employee will be allocated to the Regional Office in the strict order of seniority. The division of the staff should be made in such a manner as to afford, as far as possible, equal promotional opportunities among them. After the initial supply of staff to the Regional Office, future appointments in the two offices will be made from the respective cadres of the two offices as and when vacancies arise in the normal manner."

7. A plain reading of the above referred letter will negate the contention of the bank that the letter did not deal with the determination of the seniority of the staff allocated to BRO of DBOD as it was not the purpose of the said letter. The letter contained the scheme of arrangement in respect of

the staff attached to the BRO consequent to the staff being placed under the administrative control of the Byculla Office. Ordinarily after the staff attached to the BRO of DBOD was placed under the administrative control of the Byculla Office the staff would have been amalgamated with the staff attached to the Byculla Office with common seniority. But the management of the Bank did not want this position to emerge and a conscious decision was taken that the Bombay Regional Office was to function as an independent unit with its own separate seniority list but under the administrative control of the manager of the Byculla Office. This was one of the important aspects of the scheme of arrangement formulated by the bank in respect of the staff attached to the BRO after its separation from the Central Office and this position was specifically emphasised by the letter exhibit W-2. It may be that the decision was taken by the management of the bank to ensure that the staff allocated to the Bombay Regional Office and the staff retained by the Central Office should continue to have equal promotional opportunities. That was the rationale behind keeping the seniority of the staff attached to the BRO of DBOD separate from the staff attached to the Byculla Office. As a matter of fact the staff attached to the Bombay Regional Office would not continue to have the same promotional opportunities as it had before its separation from the Central Office unless its seniority was maintained separate from the staff of the Byculla Office. Amalgamation with the staff of Byculla Office for all purposes would have affected the seniority of the staff attached to the BRO thus affecting its original promotional opportunities.

8. In view of this clear decision the question whether actually separate seniority lists were maintained or not has no significance. The seniority was kept separate and hence seniority lists should have been kept separate and not keeping such lists would not make the seniority common.

9. The contention that separate seniority lists of staff attached to the BRO of DBOD and the staff attached to the Byculla Office were not maintained is completely falsified by the letter exhibit M-10 addressed by the Accounts Officer (Administration) of the Byculla Office to the Chief Manager, Reserve Bank of India, Central Office Department of Administration of the Bank. This letter dated 25th July, 1985 was addressed in connection with the claim put forth by Shri G. S. Rane, Smt. M. L. Bhivandkar and Smt. A'Crasto who were working as typists in BRO of DBOD. This is what the Accounts Officer stated in the letter:

"2. In 1963, the Bombay Regional Office of Department of Banking Operations & Development was transferred under the administrative control of this office alongwith some staff from Department of Banking Operations and Development. It was also understood from Department of Banking Operations & Development at that time that the seniority of the staff then attached to their Bombay Regional Office was to be kept separate from this office and future appointments in different cadres for Bombay Regional Office of Department of Banking Operations and Development and their Central Office were also to be made separately. Accordingly, in the seniority lists forwarded to Central Office every year by this office, the names of staff attached to Bombay Regional Office of Department of Banking Operations and Development and Byculla Office used to be shown separately. Although, under the Scheme of Combined Seniority for Class III staff, the seniority of clerical staff in Bombay has been combined in 1972 and that of typists etc. has also been combined subsequently, the non-clerical staff (including typists) attached to Byculla Office were, however, left out of the combined seniority and as on date, a separate seniority is maintained for non-clerical staff attached to this office. We have already made a suggestion to our Bombay Office (vide our letter No. Byc. Cy. 3254/MS. 176-84/85/copy enclosed) suggesting that this practice may be modified combining the seniority of non-clerical staff attached to Byculla Office with that of other offices, centralised in Bombay Office, in the general interest of class III employees.

3. In terms of Central Office letter D.A. No. St. (Sec. I) 11711/52C(1)-83-84 dated the 30th March, 1984 the administrative control of Bombay Regional Office

of Department of Banking Operations and Development was transferred from this office to Central Department of Banking Operations & Development and alongwith the same, the staff (including typists) then attached to their Bombay Regional Office were also transferred to Department of Banking Operations and Development. Thus, the identity of the DBO&D staff had always been kept separate and the seniority of typists of Bombay Regional Office of Department of Banking Operations & Development should have automatically merged with the seniority of typists in other departments at Bombay, including Department of Banking Operations and Development, with the delinking of Bombay Regional Office of Department of Banking Operations and Development from this office in terms of the Central Office letter cited above. We are not aware whether Bombay Office has taken appropriate action in this respect."

10. The factual position stated in para 2 leaves no doubt that after the BRO of DBOD was transferred under the administrative control of the Byculla Office it was understood that the seniority of the staff then attached to the BRO was to be kept separate from the Byculla Office, that decision was implemented and that in the seniority lists forwarded to the central office by the Byculla Office the names of the employees attached to BRO of DBOD and Byculla Office were shown separately. This position, can be seen from the seniority lists for the years 1981, 1982 and 1983 produced at Exhibit M-1 to M-3.

11. In para 3 of the letter the Accounts Officer has also mentioned the position that emerged after the administrative control of BRO of DBOD was re-transferred from Byculla Office to Central Office of DBOD alongwith the staff as per the letter dated 30th March, 1984. It is significant to note in this context that after the re-transfer of the administrative control of the central office the Byculla office ceased to have even administrative control over the staff attached to the BRO of DBOD. This re-transfer of the administrative control took place in May, 1984, long before the impugned order demoting Smt. Thosar was passed.

12. At Exhibit M-12 is a letter addressed by the Personnel Manager of the Byculla Office to the Chief Manager of the Department of Administration of the Central Office of the Bank. It was written in connection with transfer of one stenographer, one typist and two peons attached to BRO of DBOD to the newly established Rural Planning and Credit Department. The Central Office of the Rural Planning and Credit Department had advised the Byculla Office to forward the service record of one of the peons who was transferred to the department. In that behalf the Personnel Manager made the following query, after stating the position of the staff strength of the Byculla Office.

"In this connection it is noted that non-clerical staff attached to BRO of DBOD is under the administrative control of this office and as such figure in sanctioned strength of this office will undergo a change. Also there are separate seniority lists in respect of stenographers and typists for the Bombay and Byculla Offices. In this connection a copy of the letter dated 24th December, 1983 received from the Central Office, Rural Planning and Credit Department is enclosed. Under the circumstances we shall be glad to know from the Central Office if we can forward the service records in respect of all the concerned employees and reduce our sanctioned strength to that effect."

13. The reply received from the Central Office is at Exhibit M-15. It is dated 13th May, 1983. The reply stated that consequent to the transfer of staff from the BRO of DBOD to the BRO of RPCD the sanctioned strength of staff of the BRO of DBOD was to be reduced. This also goes to show that the position now adopted by the bank that the seniority of the staff attached to the BRO of DBOD and staff attached to the Byculla Office was kept common after the former staff was placed under the administrative control of the Byculla Office is wrong.

14. Moreover if as a result of placing the staff of the BRO of DBOD under the administrative control of the Byculla Office was that the seniority of this staff and seniority of the staff attached to the Byculla Office became merged and common, the same result must follow after the administrative control was retransferred in May, 1984 from the Byculla Office to the Central Office of the DBOD. As Smt. Thosar was promoted on 16th February, 1985 the position of Smt. N. L. Bhivandkar as on that date in the so-called common seniority list of the Byculla Office was irrelevant much more so when the impugned order of demotion was passed. The order demoting Smt. Thosar therefore cannot be sustained.

15. I, therefore hold that there existed separate seniority lists of the Byculla Office and the BRO of DBOD and not a combined seniority list. The reversion of Smt. Thosar from the post of Head Typist to typist was not justified. The order of demotion dated 15th July, 1986 which was in contemplation when the conciliation proceeding failed, is quashed and the bank is directed to restore Smt. Thosar to the post of Head Typist in the Byculla Office w.e.f. 15th July, 1986 and pay her all the consequent financial benefits attached to the said post from that date till she is actually re-posted. Award accordingly.

M. S. JAMDAR, Presiding Officer
[No. L-12012(229)/86-D.H.A./IR(B)-II]

का आ. 230 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्ष्मी विलास बैंक लिमिटेड कारूर के प्रबन्धन के संबंध में नियोजकों और उनके काम-कारों के बीच असुबोध में निहित विवाद में औद्योगिक अधिकरण समग्र के पंचपट का प्रकाशित करती है।

S.O. 230.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Industrial Tribunal, Madras as shown in the annexure in the industrial dispute between the employers in relation to the management of Lakshmi Vilas Bank Ltd. Karur and their workmen.

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMILNADU, MADRAS

Monday, the 13th day of November, 1989

PRESENT :

THIRU K. NATARAJAN, M.A., B.L., Industrial
Tribunal

INDUSTRIAL DISPUTE Nos. 74 of 1986
INDUSTRIAL DISPUTE NO. 78 of 1986
INDUSTRIAL DISPUTE NO. 86 of 1986
INDUSTRIAL DISPUTE NO 9 of 1987
INDUSTRIAL DISPUTE NO. 9 of 1987
INDUSTRIAL DISPUTE NO. 4 of 1987

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Lakshmi Vilas Bank Limited, Karur, Trichy District.)

BETWEEN

Thiru E. Ravi, No. 43, Gangai Ammal Koil Street, Krishnapuram, Ambur-635802 (In I.D. 74/86)

Thiru S. Soundararajan, No. 55/1, Padavettamman Koil Street, Thottapallayam, Vellore-532004, North Arcot District. (In I.D. 78/86)

Thiru T. Sunder, S/o Shri R. Thiruvengadan,
No. 70, Swamipura Street, Block No. 3,
Chola, Madras-600012. (In I.D. 86/86)

Thiru G. Shankar, No. 33, St. Mary's Road,
Madras-600028. (In I.D. 1/87)

Thiru S. Manjunatha, S/o S. Veera Rappa, 27,
Mookernathamuthu Street, Madras-600001.
(In I.D. 9/87)

Thiru P. Muralidharan, C/o R. Arunachalam
Iyer, No. 6, (1) Cross Street, Jaya Nagar,
Tambaram Sanatorium, Madras-600001.
(In I.D. 14/87)

AND

The Management of Lakshmi Vilas Bank Limited,
15/1, V Cross Street, Sengunthapuram,
P. O. Karur, District Trichy, (Tamil Nadu)-
639002.

REFERENCE :

Order No. L-12012/12/86-D. IV(A), dated 21st
24th October, 1986 of the Ministry of Labour, Gov-
ernment of India, New Delhi. (In I.D. No. 74/86)

Order No. L-12012/11/86-D. IV(A), dated 6-11-86
of the Ministry of Labour, Government of India, New
Delhi. (In I.D. No. 78/86)

Order No. L-12012/36/86-D. IV(A), dated 11-12-86
of the Ministry of Labour, Government of India, New
Delhi. (In I.D. No. 86/86)

Order No. L-12012/38/86-D. IV(A), dated
29-12-86 of the Ministry of Labour, Government of
India, New Delhi. (In I.D. No. 1/87)

Order No. L-12012/37/86-D. IV(A), dated 16-1-87
of the Ministry of Labour, Government of India, New
Delhi. (In I.D. No. 9/87)

Order No. L-12012/37/86-D. IV(A), dated 20-1-87
of the Ministry of Labour, Government of India, New
Delhi. (In I.D. No. 14/87)

These disputes coming on for final hearing upon
perusing the reference, claim and counter statements
and all other material papers on record and upon
hearing the arguments of Thiru T. Fenn Welter, Adv-
ocate appearing for the workmen in all the disputes and
of Tvl. T. S. Gopalan, P. Ibrahim Kalifullah and S.
Ravindran, Advocates for the Management in all the
disputes and these disputes having stood over till this
day for consideration this Tribunal made the follow-
ing Common.

AWARD

I.D. 74/86 : This dispute between the workman
and the Management of Lakshmi Vilas Bank Ltd.,
Karur-1 arises out of a reference under Section
10(1)(d) of the Industrial Disputes Act, 1947 by the
Government of India in its Order No. L-12012/12/
86-D. IV(A), dated 21/24-10-86 of the Ministry of
Labour for adjudication of the following issue :

“Whether the action of the Management of
Lakshmi Vilas Bank Ltd. in relation to its

Ambur Branch in terminating the services
of Shri E. Ravi, Peon from 1-8-1985 is
justified ? If not, to what relief is the work-
man concerned entitled ?”

2. The claim petition averments in I.D. 74/86 are
that the Petitioner entered in service under the Res-
pondent at Ambur, North Arcot District with effect
from 7-5-79 as a peon. He was working continuously
and his service throughout was diligent. He has
worked for more than 230 days excluding holidays,
authorised absence, etc. in a period of 7-5-79 to
1-8-85. While so he was also called for interview on
15-3-84 for the regularisation of his service. He
appeared before the authorities and he fared well in
the interview and in the written test and results were
not communicated to him. To his surprise he was
denied employment from 2-8-85 without any reasons.
His termination was contrary to various provisions
of Industrial Disputes Act and the service regulations.
The contention of the respondent that he was not
an employee of the Respondent-Bank and he was not
even a casual worker, is totally false. He was tem-
porarily employed under the Respondent-Bank and
was terminated orally from service. He was not en-
gaged under the Respondent for any fixed period not
even a written order was given to him regarding his
appointment. The Petitioner was actually worked as
a temporary peon and was working in that capacity
for a number of years and hence he has got right to
serve under the Respondent. The termination of ser-
vice is gross violation of Section 25-F, 25-N and 25-G
of the Industrial Disputes Act. His juniors like G.
Venkatesan, B. Prabakaran, P. Sudakar, V. Dayalan,
K. Sridhar, S. Muthukrishnaiah, T. Kuppuraja and
50 others are still retained in service. The Respondent
has deliberately suppressed various material facts.
The Petitioner states that while various disputes were
pending before the Labour Court and Industrial Tri-
bunal, the Respondent without obtaining any permis-
sion under Section 33(2)(b) of the Industrial Dis-
putes Act straightaway terminated his services and
the termination is unjust and illegal. He was drawing
a salary of Rs. 750 p.m. at the time of termination
from service. Hence the claim for reinstatement with
all benefits.

3. The Respondent in its counter states that
one of the Respondents branches is located at Ambur.
Whenever the clerical staff absent from work, the work
is attended to by other staff members including
officers or by the same clerk when he resumes duty
subsequently. As far as the subordinate staff are con-
cerned, the absenteeism is so erratic and the nature of
work cannot be postponed. Hence in those contingen-
cies, the Respondent used to engage temporary sub-
staff since they were not appointed for any sanctioned
strength and there was scope to provide them regular
permanent employment. The temporary sub-staff are
engaged for a very few days in a year and certainly
no temporary sub-staff was engaged for a period of
240 days in any continuous period of 12 calendar
months. In the year 1983 the Respondent-Banks
employees union made representation for laying down
norms for appointment of temporary sub-staff. They
agreed that every temporary sub-staff who has worked
for a minimum total of 50 days will be included in
the list of sub-staff to be prepared every year. It is

further agreed that future vacancies in the post of sub-staff should be filled up from among temporary sub-staff found in the list maintained by the personnel Department. The engagement of sub-staff is purely temporary for a particular contingency and not against the permanent vacancy. In 1983 the Respondent-Bank's Directors meeting held on 20-11-83 resolved to prepare a panel of names of 125 persons for recruitment of sub-staff by selecting from among the persons who commenced working in the bank on temporary basis on or after 1-1-80. By another resolution dated 31-12-83 the Board constituted a selection-committee to conduct interview of the existing candidates at various centres for preparing a panel of temporary sub-staff after test and interview. The committee selected 166 candidates to be kept in the panel of temporary sub-staff, even though the resolution of the Board was for selecting 125 candidates. By middle of 1984, there were 58 posts of permanent sub-staff among which vacancies were filled up. Among the 166 selected candidates for the panel of temporary sub-staff, 49 candidates were selected for permanent employment and the list of remaining candidates was abolished. Subsequently the qualification for temporary sub-staff was reduced to VIII Standard fail by the Respondent-Bank's Board in a meeting held on 2-2-85. Subsequent to 2-2-85 the Respondent has engaged only persons with qualification of VIII standard fail as sub-staff in all branches. The Respondent did not terminate the services of the Petitioner. The Respondent was not engaging the Petitioner after 1985. The Respondent denies the petitioner worked continuously from 7-5-79 to 1-8-85. The Petitioner was not one of those selected for regular employment from among the candidates, who appeared for interview and test for selection of a panel. The Petitioner was not in service of the Respondent-Bank nor had he put in one year of continuous service within the meaning of Section 25-B of the Industrial Disputes Act. His non-engagement would not amount to termination. Hence the question of violation of Section 25-F of the Industrial Disputes Act does not arise. The Petitioner was engaged only for 138 days at Ambur from 1979 to 1985. It is incorrect to state that juniors were appointed. It is also incorrect to state that the Petitioner was drawing a salary of Rs. 750 p.m. He was paid only on the basis of daily rate of wages. Hence the Tribunal may pass an award rejecting the claim of the Petitioner.

4. The Petitioner in I.D. 74/86 filed a reply statement stating that he was actually working continuously and he was paid daily or weekly and he has signed in vouchers. He was not allowed to sign in muster-roll though he was working continuously. It is false to state that he has not worked for 240 days in a year. The Petitioner though was willing to work on all the days he was not permitted to work on certain days in course of policy adopted by the Management that the workman should not be allowed to work continuously for 90 days. The Respondent engaged in unfair labour practice. The Petitioner not being a member of any union and none of the agreement can bind him. The Petitioner states the act of the Respondent in not engaging the petitioner after 2-8-85 clearly amounts to retrenchment falling under Section 2(oo) of the Industrial Disputes Act and hence attracted Section 25-F of the I.D. Act. The retrenchment is

invalid and inoperative. Hence the Petitioner may be reinstated with all benefits.

5. I.D. 78/86. This dispute between the workman and the management of Lakshmi Vilas Bank Ltd., Karur-1 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/11/86-D. IV(A) dated 6-11-86 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Lakshmi Vilas Bank Ltd., in relation to its Vellore Branch in terminating the services of Shri S. Soundararajan, peon from 7-8-1985 is justified ? If not, to what relief is the workmen concerned entitled ?"

6. The Petitioner in I.D. 78/86 filed a similar claim statement as that of I.D. 74/86 except for the fact that the Petitioner was engaged only for 587 days from 9-11-79 to 6-8-85 and he was denied employment on 7-8-85.

7. The Respondent also filed a similar counter as that of I.D. 74/86 except for the fact that the Petitioner was engaged for 577 days from 1979 to April 1985 namely 561 days in Vellore; 12 days in Kandali; and 4 days in Chittur.

8. The Petitioner also filed a reply statement as that of I.D. 74/86.

9. I.D. 86/86 : This dispute between the Workman and the Management of Lakshmi Vilas Bank Ltd., Karur-1 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. 12012/36/86-D. IV(A), dated 11-12-1986 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the Management of Lakshmi Vilas Bank Ltd., H. O. Karur, Distt. Trichy (Tamilnadu) in terminating the services of the workman Shri T. Sundar w.e.f. 9-7-85 retaining persons junior to him in service and in not providing opportunity of re-employment to the said workman is justified ? If not, to what relief is the workman concerned entitled ?"

10. The Petitioner in I.D. 86/86 filed a similar claim statement as that of I.D. 74/86 except for the fact that the Petitioner has actually worked for more than 907 days excluding holidays, authorised absence, sickness, etc. from 23-11-79 to 8-7-85 and he was denied employment on 9-7-85.

11. The Respondent also filed a similar counter as that of I.D. 74/86 except for the fact that the Petitioner was engaged only for 764 days from 1979 to December 1984 namely 6 days in Mylapore Branch; 6 days in Triplicane Branch; 5 days in Royapuram Branch; 134 days in Purasawalkam Branch; 15 days in Cathedral Branch; 35 days in Numgambakkam Branch; 1 day in G. N. Street; 165 days in Madras Main and 400 days in Clearing Department.

12. The Petitioner also filed a reply statement as that of I.D. 74/86.

13. I.D. 1/87 : This dispute between the workman and the Management of Lakshmi Vilas Bank Ltd., Karur-1 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/38/86-D, IV(A) dated 29-12-86 of the Ministry of Labour for adjudication of the following issue :

“Whether the action of the Management of Lakshmi Vilas Bank Ltd., H.O. Karur, Distt. Trichy (Tamilnadu) in terminating the services of the workman Shri G. Shankar with effect from 14-7-85 retaining in service persons junior to him and in not providing an opportunity of re-employment to the said workman is justified? If not, to what relief is the workman concerned entitled?”

14. The Petitioner in I.D. 1/87 filed a similar claim statement as that of I.D. 74/86 except for the fact that the petitioner has actually worked for 453 days excluding holidays, authorised absence, sickness, etc., from 8-3-82 to 13-7-85 and he was denied employment on 14-7-85.

15. The Respondent also filed a similar counter as that of I.D. 74/86 except for the fact that the Petitioner was engaged only for 234 days during the period from 1982 to 1984 namely 59 days in Madras main; 51 days in G. N. Street Branch; 5 days in Nungambakkam Branch; 118 days in Cathedral Branch; 1 day in Purasawalkkam Branch.

16. The Petitioner also filed a reply statement as that of I.D. 74/86.

17. I.D. 9/87 : This dispute between the workman and the Management of Lakshmi Vilas Bank Ltd., Karur-1 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. 12012/37/86-D, IV(A), dated 16-1-87 of the Ministry of Labour, for adjudication of the following issue :

“Whether the action of the management of Lakshmi Vilas Bank Ltd., Head Office, Karur, District Trichy (Tamilnadu) in terminating the services of the workman Shri S. Maniunatha w.e.f. 31-7-1985 retaining the service persons junior to him and in not providing opportunity of re-employment to the said workman is justified? If not, to what relief is the workman concerned entitled?”

18. The Petitioner in I.D. 9/87 filed a similar claim statement as that of I.D. 74/86 except for the fact that the Petitioner has actually worked for 410 days excluding holidays, authorised absence, sickness, etc., from 13-1-83 to 30-7-85 and he was denied employment on 31-7-85.

19. The Respondent also filed a similar counter as that of I.D. 74/86 except for the fact that the Petitioner was engaged only for 208 days during the period from 1983 to 1984 namely 15 days in Madras Main; 151 days in G. N. Street Branch; 5

days in Purasawalkkam Branch and 31 days in Clearing Department.

20. The Petitioner also filed a reply statement as that of I.D. 74/86.

21. I.D. 14/87 : This dispute between the workman and the Management of Lakshmi Vilas Bank Ltd., Karur-1 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/39/86-D, IV(A), dated 29-1-1987 of the Ministry of Labour for adjudication of the following issue :

“Whether the action of the Management of Lakshmi Vilas Bank Ltd., Head Office, Karur, District Trichy (Tamilnadu) in terminating the services of the workman Shri R. Muralidharaj w.e.f. 27-7-1985 retaining in service persons junior to him and in not providing opportunity of re-employment to the said workman is justified? If not, to what relief is the workman concerned entitled?”

22. The Petitioner in I.D. 14/87 filed a similar claim statement as that of I.D. 74/86 except for the fact that the petitioner has actually worked for 625 days excluding holidays, authorised absence, sickness, etc., from 7-2-80 to 26-7-85 and he was denied employment on 27-7-85.

23. The Respondent also filed a similar counter as that of I.D. 74/86 except for the fact that the Petitioner was engaged only for 276 days namely 152 days in Cathedral Road Branch; 11 days in Mount Road Branch; 1 day in Purasawalkkam Branch; 40 days in Nungambakkam Branch; 67 days in Madras Main Branch; and 5 days in Clearing Department.

24. The Petitioner also filed a reply statement as that of I.D. 74/86.

25. The points for determination are (i) Whether the action of the Management in terminating the services of the Petitioners from their various branches is justified? (ii) To what relief?

26. W.W. 1, W.W. 2 and M.W. 1 were examined on the side of the Petitioners and the Management respectively. Ex. W. 1 to W. 14 and M. 1 to M. 44 were marked on either side.

27. The above disputes are tried together and evidence was recorded in common in I.D. 74/86 as per joint memo filed by both parties.

28. The issues for consideration in all the above disputes are the same namely (i) Whether the action of the Management in terminating the services of the Petitioners from their various branches is justified? (ii) To what relief?

29. On behalf of the Petitioners, the Petitioner in I.D. 86 of 1986 and the Petitioner in I.D. 78/86 were examined as W.W. 1 and W.W. 2 respectively. The

evidence of W.W. 1 is that the Petitioners were working in various branches i.e. in the Respondent Bank as Messengers for the period of 280 days to 300 in a calendar year. According to him they were appointed for 15 days but they were not given continuous work for the period of 90 days as per the instructions of the Management. He would add that they were not given any order in writing before terminating them and they were terminated orally. He would also depose to the facts of interview done by the Respondent-Bank. His further evidence is that they were not given retrenchment notice nor paid compensation. His further version is that juniors like Venkatesan, Sudhakar, Dayalan, Muthukrishnaiah, Sridhar and Prabhakar were employed. W.W. 2 would also swear that right from the beginning himself and other petitioners were working as peons and also as clerks; that all of them have passed S.S.L.C. He would add that they could not be given regular employment on all days. The Respondent would send them back stating that there is no job. His version is that they were not paid wages for certain days and the Office Register and Ledger maintained by the Bank would show the dates they have worked. However, he would also file Ex. W-5 and W-10, statement prepared by them, showing the dates they have worked in the Respondent-Bank.

30. As against the evidence of these workers, the Respondent examined the Chief Manager as M.W. 1. He would swear that these persons will be appointed by branches in absence of regular permanent workers. In short, they were appointed as casual workers. He would file Ex. M-1 to M-9, statements, showing the dates on which the Petitioners have worked in the Respondent-Bank. His evidence is prior to 1-9-1983 there is no attendance register. It is only from April 1985 the attendance register is maintained for the casual labourers. This further evidence is that there was an understanding between the Respondent-Bank and the Union and in pursuance of the same the Respondent-Bank decided to prepare a panel for 125 casual workers so that the vacancy may be filled up from the panel. He would also refer to Ex. M-20, dated 8-4-85 the circular issued by the Personnel Department of the Respondent-Bank that in future only candidates who are 8th Standard failed will be eligible for inclusion in the temporary peons panel and the persons engaged as temporary peons, who have passed S.S.L.C. and above should be dispensed with immediately. The circular further reads the candidates should be between the age of 18—25 years to be eligible for entering the service as temporary peon and that a temporary peon shall not be allowed to work for more than 90 days at a time without a break, in a block of 12 months. At this stage it is the case of the Petitioners that mainly in view of the Circular Ex. M-20 that the persons who have passed SSLC who are engaged as temporary peons should be dispensed with immediately. The Petitioners since are SSLC they have been terminated from service. In short though M.W. 1 would deny that the Petitioners were terminated in view of Ex. M-20, a reading of cross-examination would show that only after superseding the earlier circulars, action has been taken against the Petitioners terminating the services orally. At this stage, it is the case

of the Petitioners since they had worked for 240 days in a block of 12 months, the Respondent ought to have followed the procedure under Section 25-F of the Industrial Disputes Act before disengaging them. It is further contended by the learned counsel for the Petitioner that as per Circular Ex. W-3 the candidates who have passed SSLC should be eligible and by changing the qualification under Ex. M-20 would amount to change of condition of service and therefore a notice of change of service condition should have been given in advance as per Section 9-A of the Industrial Disputes Act, 1947. This contention though appears to be true, it is relevant to note that it would not apply to casual labourers but would only to regular staff. By virtue of Section 9-A of Industrial Disputes Act enforcing the change of condition sought to be raised on the workers the Respondent ought to have given notice of the same. But the learned counsel for the Respondent urged that change of service condition should be applicable only to workmen who are in regular employment and not for casual or temporary workmen. But this contention cannot be accepted for the simple reason that Section 9-A of the Act makes no difference either for the casual labourer or for regular workmen. According to the learned counsel for the Petitioner this change of qualification for eligibility would fall under the item 9 Schedule IV of the I.D. Act. Item 9 relates to introduction of new rules of discipline, or alteration of existing rules, except in so far they are provided in Standing Orders. But for Ex. M-20 the educational qualification fixed for the temporary sub-staff is SSLC as can be seen from the Circular issued by the Respondent on 3-11-81 under Ex. W-3. In the absence of showing by the Respondent that Section 9-A Notice only applies to regular or permanent workmen, I am unable to appreciate this contention that there cannot be any violation in Section 9-A Notice and therefore no unfair labour practice was followed.

31. Further in this case the fact that the Petitioners were disengaged some time in August 1985 without written order or orally has not been disputed. At this stage it is the plea of the learned counsel for the Petitioners that the Petitioners have worked for 240 days and above in a block of 12 months and therefore their disengagement by orally or by written should have been proceeded by the conditions contained in Section 25-F of the Industrial Disputes Act. But on the other hand the learned counsel for the Respondent would vehemently contend that these petitioners were employed only on a leave vacancy and that too temporarily and that therefore they have no right to claim any permanency in the job. In other words, the appointment of temporary sub-staff against the leave vacancy does not provide a score for getting the appointment of permanency. According to him and as can be seen from Ex. M-1 to M-9 statements worked out by the Petitioners would show that they have been engaged temporarily in the leave vacancy of permanent staff and therefore Section 2(a)(bb) is attracted and the question of retrenchment does not arise and consequently it is not obligatory on the part of the Respondent to follow the conditions prescribed under Section 25-F

of the Industrial Disputes Act prior to retrenchment. Section 2(oo)(bb) says :

"Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein would include retrenchment".

It is true in this case as can be seen from the Circular orders issued under Ex. W-2 and W-3 and also as per settlements under Ex. M-1 to M-9 would show that the Petitioners were appointed only for a specific period to act in the vacancies of permanent sub-staff. It is true, the Respondent has not chosen to raise this plea in his counter statement but at the time of argument he took his plea of Section 2(oo)(bb). I am not inclined to accept this contention in the absence of specific plea in the counter statement. Hence the Petitioners had they worked for 240 days in a block of 12 months, then their disengagement or termination for any reason whatsoever would amount to retrenchment. In this connection the Petitioners would like Ex. W-5 to W-10 the particulars of dates in the branch they worked for relevant dates. According to the Petitioners that on the basis of these statements it is clear that they worked for 240 days and more. In this connection it is pointed out by the learned counsel for the Respondent that there is difference in number of days worked by the Petitioners in the claim statement and the statements filed under Ex. W-5 to W-10. On the other hand the Respondent besides denying the fact through M.W. 1 that the Petitioners worked for more than 240 days, would file Ex. M-1 to M-9 showing the number of days worked by the Petitioners. According to Respondent these particulars in Ex. M-1 to M-9 were culled out from the Attendance Registers. According to Respondent as per Ex. M-1, relating to the Petitioner in I.D. 74/86, he has worked for only 243 days for the whole period namely 1979 to 85 whereas claim of the Petitioner is 230 days and Ex. W-1 would claim more days. Similarly in the case of Petitioners in I.D. 78/86, I.D. 86/86, I.D. 1/87, I.D. 9/87 and I.D. 14/87 as per Ex. M-2 to M-9 statements, the Petitioner in I.D. 78/86 has worked for 616 days; the petitioner in I.D. 86/86 has worked for 891 days; the Petitioner in I.D. 1/87 has worked for 304 days; the Petitioner in I.D. 9/87 has worked for 302 days; and the Petitioner in I.D. 14/87 has worked for 341 days whereas the claim petition prays 587, 907, 453, 410 and 625 days respectively for the entire period they have worked in the Respondent-Bank. In short, it is vehemently contended by the learned counsel for the Respondent that the Petitioners have not worked for 240 days continuously in a block of 12 months period, though they have worked for 3 to 8 years in the whole period. On this aspect, the Petitioners have not substantiated by placing relevant documents apart from Ex. W-5 to W-10 self-serving documents, which have no evidentiary value in the absence of corroborative evidence. It is not proved by the Petitioners from W-5 to W-10 that the Petitioners worked for more than 240 days. Incidentally it is further contended by the learned

counsel for the Petitioner that by virtue of a decision reported in 1985-II-L.L.J. page 539 that the Sundays and holidays should be included to calculate the number of days worked. According to the learned counsel for the Petitioner that if the Sundays and holidays are included they would easily surpass 240 days in a block of 12 months. The decision reported in 1985-II-L.L.J. 539 that the Sundays and holidays should be calculated for the purpose of calculating the number of days provided they are paid holidays. As per above decision the Petitioners should show that they were in the employment of the employer on holidays also for which they have been paid wages. In the instant case the Petitioners are not paid wages except for the days for which they worked. Therefore the days for which they were not paid cannot be taken into account for reckoning of one year of continuous service under Section 25-B of the I.D. Act. It is seen from the cross-examination of W.W. 2 that they raised the issue of non-payment of wages for the period worked by them just three months before the dispute. According to W.W. 2 he could not say from Ex. W-5 to W-10 for which days the Petitioners were not paid wages. Hence this contention has no legs to stand. According to W.W. 1 wages were paid only for the days the Petitioners have worked. Thus it is clear even according to the admission of W.W. 2 the Petitioners do not know the days for which they were not paid wages. Ex. W. 4 is circular dated 2-2-84 issued by the Personnel Department of the Respondent-Bank regarding the wages to temporary peons. Clause 5 says that "the wages of the temporary peons must be credited to the respective S.B. a/c's of the concerned temporary peons on the salary dated". Much stress is laid on this clause by the learned counsel for the Respondent and contended that the wages for the days worked by the temporary peons is credited to S.B. accounts of the concerned peons and therefore there is no question of non-payment of wages for the days worked by the Petitioners. It is also significant to note that institutions like Respondent-Bank would not have kept quiet without paying the wages for the days worked by the Petitioners.

32. The learned counsel for the Respondent contended that in as much as the Petitioners have not worked for 240 days of continuous service in a block of 12 months, the question of retrenchment does not arise and therefore the Respondent need not comply the conditions of Section 25-F. There cannot be any dispute that the workman has not worked for 240 days of continuous service as contemplated under Section 25-B. The Management need not follow the conditions envisaged under Sections 25(F), 25(G) of the I.D. Act.

33. The learned counsel for the Petitioner would draw my attention to the decision reported in 1985-II-L.L.N. page 1037 and contended that even striking of names from rolls of the daily rated workmen amounts to termination of service and such termination is retrenchment made in violation of mandatory provisions of Section 25-F of the I.D. Act. In that case the appellant before the Supreme Court the daily rated workman in Reserve Bank of India was

struck off from the rolls after passing the matriculation examination. He was not told at that time, when he accepted the job, that his name would be struck off from the rolls if he passed the matriculation examination. He raised a dispute. The Tribunal held the appellant is not entitled to the benefit. In that case the Supreme Court held the appellant was not told that he would be struck off from the rolls if he passed the matriculation, he was not given any order in writing either refusing the work or informing him, it is merely struck off from the rolls. A close scrutiny of the decision shows that this decision is almost similar to the facts of the present case but in that case the Supreme Court found that the appellant has proved that he worked for more than 240 days. On the other hand, there is no convincing proof by the Petitioners for having worked for 240 days so as to attract the provisions of Section 25-F, 25-G of the I.D. Act. In view of lack of evidence on this aspect, it is not possible to hold that the Petitioners have worked for 240 days continuously in a block of 12 months. It makes the difference from that case cited before us. Hence the above decision is distinguishable in this aspect and cannot be invoked by the Petitioners so as to hold that disengagement of the Petitioners orally would amount to retrenchment and consequently all benefits would have been accrued under the Provisions of the Industrial Disputes Act.

34. The learned counsel for the Respondent also raised a contention that the Petitioners' appointment are in nature of Badli and therefore temporary and hence the non-engagement after that period cannot be termination. He would refer a decision reported in 1987-I-L.L.J. page 97 at 101 (Supreme Court *Prakash Cotton Mills P. Ltd. v. The Rasthriya Mill Mazdoor Sangh*). The Supreme Court held that :

"a Badli workmen get work only in the absence, temporary or otherwise, or regular employees, and that they do not have any guaranteed right of employment. They have no right to claim employment in the place of any absentee employee. They could not be said to have been deprived of any work to which they had any right and consequently they are not entitled to any compensation for the closure."

This contention was also raised in 1985-II-L.L.N. page 1037. The Supreme Court taking into consideration of the facts of that case held that the workman was not a Badli worker. Anyway it has been found the Petitioners since failed to discharge their burden to prove that they worked for 240 days continuously in a block of 12 months. They are not entitled to succeed.

35. Moreover it is pointed out by the learned counsel for the Respondent that W.W. 1, W.W. 2 were not preferred to work as temporary. In fact they insist only for regular employment. This plea cannot be counteracted for the simple reason that the very appointment of the petitioners was only for the leave vacancy of the permanent sub-staff. The other contention of the learned counsel for the Respondent is since the claim is for permanent employment they cannot raise an Industrial Dispute under

Section 2-A for permanency. In other words, it is urged when the Petitioners were being engaged they cannot raise an industrial dispute under Section 2-A of the I.D. Act claiming permanency which they cannot do indirectly. According to the Respondent if they could not claim permanency when they were engaged, they cannot claim permanency after the cessation of employment under Section 2-A of the Act. This contention in general cannot be accepted for the simple reason if the workman is able to prove that he worked for 240 days of continuous service as contemplated under Section 25-B of the I.D. Act.

36. It is also the case of the Respondent that in view of Ex. M-10 settlement arrived at between the employees' Union and the Respondent-Bank, it was resolved by the Respondent Bank to prepare a panel of names of 125 persons for recruitment of Sub-staff by selection among the persons who commence working in the bank on temporary basis from 1-1-80. Ex. M-13 is the procedure for recruitment of temporary persons. Under Ex. M-14 a committee consisting of three persons was formed for selecting and preparing a list of suitable candidates for recruitment as sub-staff from among the existing temporary hands and the list should be valid for one year. Ex. M-15 is minutes of discussion between the Management and the Union and as per understanding the list will be valid for one year and due consideration should be given for seniority while constituting the panel. Thereupon, under Ex. M-16, the Board sanctioned the number of persons to be selected, the place of panel for recruitment and the vacancies to be filled up depending upon the number of vacancies available. It is urged by the learned counsel for the Respondent the above documents would go to show that nothing has been done out of the way to deprive employment for the Petitioners. On the other hand it is argued that the Petitioners did not come out successfully in the test and interview and even they were successful, they could not be accommodated from the panel since that there were 44 vacancies only and further the list of panel was valid for one year. Therefore as rightly pointed out by the learned counsel for the Respondent it is not with a view to deprive the Petitioners they have been terminated. On the other hand it is only on the basis of settlement arrived at between the employees' Union and the Respondent the self-norm for recruitment and preparation of panel were arrived at.

37. For all these reasons, it has to be found that the action of the Management in terminating the services of the Petitioners is justified. Hence this point is found against the Petitioners.

38. POINT (ii) : In view of the finding on Point (i), the Petitioners are not entitled to any relief. Hence an award is passed rejecting the claim of the Petitioners. No costs.

Dated this the 13th day of November, 1989.

K. NATARAJAN, Industrial Tribunal
[No. L-12012/12/86-D.IV(A)/IR(B-I)]

WITNESSES EXAMINED**For Workmen :**

W.W.1.—Thiru T. Sundar.

W.W.2.—Thiru S. Soundararajan.

For Management :

M.M.1.—Thiru N. Ramalingam.

DOCUMENTS MARKED**For Workmen :**

Ex. W-1|6-3-1981.—Circular by the Management regarding engagement of casual labour (Xerox copy).

W-2|12-8-1981.—Circular issued by the Management regarding engagement of casual labour (Xerox copy).

W-3|3-11-1981.—Circular issued by the Management regarding engagement of casual labour (Xerox copy).

W-4|2-2-1984.—Circular issued by the Management regarding wages to temporary peons (Xerox copy).

W-5.—Statement showing number of days worked by Thiru E. Ravi in the Management—Bank (Xerox copy).

W-6.—Statement showing No. of days worked by Thiru R. Muralitharan in the Respondent—Bank (Xerox copy).

W-7.—Statement showing No. of days worked by Thiru S. Manjunathan in the Management—Bank (Xerox copy).

W-8.—Statement showing No. of days worked by Thiru G. Sankar in the Management—Bank (Xerox copy).

W-9.—Statement showing No. of days worked by Thiru T. Sundar in the Management—Bank (Xerox copy).

W-10.—Statement showing No. of days worked by Thiru S. Soundararajan in the Management—Bank (Xerox copy).

W-11|22-10-1983.—Letter from Management—Bank to the Manager, The Lakshmi Vilas Bank Ltd., Ambur regarding engagement of Thiru E. Ravi (Xerox copy).

W-12|18-2-1981.—Letter from Management—Bank to Thiru T. Sundar (Xerox copy).

W-13|19-10-85.—Circular issued by the Management—Bank regarding payment of bonus to temporary peons (Xerox copy).

W-14.—List of temporary peons engaging from 1979 to 31-8-1983 (Xerox copy).

For Management :

M-1.—Statement showing days for which Thiru E. Ravi was engaged, the contingency for engagement and the name of the sub-staff whose leave vacancy necessitated the

temporary engagement for the period 7-5-1979 to 18-12-1985 (Xerox copy).

M-2.—Statement showing days for which Thiru S. Soundararajan was engaged, the contingency for engagement and the name of the sub-staff whose leave vacancy necessitated the temporary engagement for the period 9-11-1979 to 19-11-1985 (Xerox copy).

Ex. M-3|19-10-85.—Statement showing days for which Thiru T. Sundar was engaged, the contingency for engagement and the name of the sub-staff whose leave vacancy necessitated the temporary engagement for the period 23-11-79 to 8-7-85 (Xerox copy).

M-4|19-10-85.—Statement showing days for which Thiru G. Sankar was engaged, the contingency for engagement, and the name of the sub-staff whose leave vacancy necessitated the temporary engagement for the period 24-9-82 to 29-11-84 (Xerox copy).

M-5|19-10-85.—Statement showing days for which Thiru G. Sankar was engaged, the contingency for engagement and the name of the sub-staff whose leave vacancy necessitated the temporary engagement for the period 1983 to 1985 (Xerox copy).

M-6|19-10-85.—Statement showing days for which Thiru S. Manjunathan was engaged, the contingency for engagement and the name of the sub-staff whose leave vacancy necessitated the temporary engagement for the period 15-12-83 to 29-7-85 (Xerox copy).

M-7|19-10-85.—Statement showing days for which Thiru S. Manjunathan was engaged, the contingency for engagement for the period 1983 to 1985 (Xerox copy).

M-8|19-10-85.—Statement showing days for which Thiru R. Muralidharan was engaged, the contingency for engagement for the period 23-6-80 to 28-12-84 (Xerox copy).

M-9|19-10-85.—Statement showing days for which Thiru R. Muralidharan was engaged, the contingency for engagement for the period 1984 and 1985 (Xerox copy).

M-10|1-7-83.—Minutes of meeting held between the Management—Bank and the Lakshmi Vilas Bank Employees Union (Xerox copy).

M-11|13-9-83.—Circular issued by the Management—Bank to its Branches regarding engagement of casual labour (Xerox copy).

M-12|29-11-83.—Board Resolution of the Management—Bank (Xerox copy).

M-13|3-12-83.—Circular issued by the Management—Bank regarding recruitment of temporary peons/casual labourers. (Xerox copy).

M-14|31-12-83.—Board Resolution of the Management—Bank (Xerox copy).

- M-15|9-11-84.—Extract of the minutes of discussion between the Management-Bank and the Lakshmi Vilas Bank Employees Union (Xerox copy).
- M-16|9-11-84.—Memorandum by the Management-Bank to the Board of Directors regarding recruitment of sub-staff|Peons (Xerox copy).
- M-17|5-1-85.—Resolution of Board Meeting (Xerox copy).
- M-18|2-2-85.—Resolution of Board Meeting (Xerox copy).
- M-19|2-2-85.—Memorandum submitted to the Board for the meeting held on 2-2-85 (Xerox copy).
- Ex. M-20|18-4-85.—Circular issued by the Management-Bank to its Branches regarding engagement of temporary peons (Xerox copy).
- Ex. M-21|6-11-85.—Circular issued by the Management-Bank to its Branches regarding engagement of temporary peons (Xerox copy).
- Ex. M-22|26-11-85.—Statement showing the details of permanent appointment made in the category of sub-staff during the period 1979 to 1984.
- M-23|6-11-85.—Attendance Register for the period July 1983 to December 1985 (Xerox copy) (GN. Street, Madras-1 Branch).
- Ex. M-24|6-11-85.—Attendance Register for the period September 1983 to September 1985 (Xerox copy) (Vellore Branch).
- Ex. M-25|6-11-85.—Attendance Register for the period August 1983 to December 1985 (Xerox copy) (Ambur Branch).
- Ex. M-26|6-11-85.—Attendance Register for the period January 1983 to December 1985 (Xerox copy) (Thambuchetty Street Branch).
- Ex. M-27|6-11-85.—Attendance Register for the period January 1983 to December, 1985 of Purasawalkam Branch (Xerox copy).
- Ex. M-28|6-11-85.—Attendance Register for the period January 1983 to December 1985 of Clearing Department (Xerox copy).
- Ex. M-29|6-11-85.—Statement showing the temporary peons engaged in Vellore Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-30|6-11-85.—Statement showing the temporary peons engaged in Kandili Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-31|6-11-85.—Statement showing the temporary peons engaged in Ambur Branch from 2-1-78 to 31-8-83 (Xerox copy).

- Ex. M-32|6-11-85.—Statement showing the temporary peons engaged in Cathedral Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-33|6-11-85.—Statement showing the temporary peons engaged in Mount Road Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-34|6-11-85.—Statement showing the temporary Peon's wages during the period from 1-1-78 to 31-8-83 engaged in Mount Road Branch (Xerox copy).
- Ex. M-35|6-11-85.—Statement showing the temporary peons engaged in Malapore Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-36|6-11-85.—Statement showing the temporary peons engaged in Kodambakkam Branch from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-37|6-11-85.—Statement showing the temporary peons engaged in Thambu Chetty Street Branch Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-38|6-11-85.—Statement showing the temporary peons engaged in Purasawalkam Branch Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-39|6-11-85.—Statement showing the temporary peons engaged in Clearing Department Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-40|6-11-85.—Statement showing the temporary peons engaged in Accounts Department Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-41|6-11-85.—Statement showing the temporary peons engaged in Triplicane Branch, Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-42|6-11-85.—Statement showing the temporary peons engaged in Royapuram Branch Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-43|6-11-85.—Statement showing the temporary peons engaged in Nungabakkam Branch, Madras from 1-1-78 to 31-8-83 (Xerox copy).
- Ex. M-44|6-11-85.—Statement showing the temporary peons engaged in Govindappan Nair Street, Madras from 1-1-78 to 31-8-83 (Xerox copy).

K. NATARAJAN, Industrial Tribunal.

का. आ. 231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम जबलपुर के प्रबंधक के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण जबलपुर के पंचाद को प्रकाशित करती है।

S.O. 231.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the

Central Govt. hereby publishes the award of the Central Govt. Industrial Tribunal, Jabalpur as shown in the annexure, in the industrial dispute between the employers in relation to the management of L.I.C. of India, Jabalpur and their workmen.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT|LC(R)(44)|1986

PARTIES :

Employers in relation to the management of Life Insurance Corporation of India, Jabalpur (M.P.) and their workman Shri Phool Singh Parihar Mobile Van Driver through The General Secretary, Insurance Workers Union, Jeevan Prakash, Madan Mahal, Jabalpur (M.P.).

APPEARANCES :

For Workman.—Shri R. K. Gupta, Advocate.

For Management.—Shri A. G. Dhande, Advocate.

INDUSTRY : Insurance DISTT. : Jabalpur (M.P.)

AWARD

Dated 25-4-1989

Central Government in the Ministry of Labour has referred the following dispute for adjudication to this Tribunal under Cl. 10(1)(d) and sub-section (2A) of the I.D. Act, 1947, vide Notification No. L-17012|(6)|84-D.IV(A), dated 24th March, 1986 :

THE SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Jabalpur (M.P.) in denying overtime under the present system of calculation of duty hours, to Shri Phool Singh Parihar, Mobile Van Driver is justified? If not, what would be the system to be adopted and what would be relief to the workman concerned and from date?"

2. It is a common ground that the workman Shri Phool Singh Parihar was appointed as a Mobile Van Driver w.e.f. 20-12-1962 (Ext. M-3) and posted under the Divisional Manager, L.I.C., Jabalpur. The terms and conditions of employees employed by the Life Insurance Corporation of India, hereinafter referred as LIC, are governed by the regulations known as Staff Regulations, 1960 as modified from time to time.

3. Ex. M-3 dated 20-12-1962 is the appointment with the duty list dated 18-12-1962 (Ex. M-4|W-4) of the workman. Duties of Class III and IV employees are regulated as per Staff Regulations. The normal duty hours of Class III employees including the

drivers while at Headquarters are from 9.30 A.M. to 5.30 P.M.

4. Workman had filed an application U/s. 33-C(2) of the I.D. Act No. CGIT|LC(C)(151)|81, dated 22-11-1981 for payment of overtime for performing overtime in excess of his normal duties for the period 1962 to 1977. The application was rejected by the then Presiding Officer with costs of Rs. 100/- vide order dated 3-8-1982 (Ex. M-1). Workman challenged the said order vide Writ Petition No. MP|137|83 under Article 226 of the Constitution. The Hon'ble High Court of M.P., Jabalpur disposed of the said petition vide its order dated 18-3-1983. The relevant portion of the said order is being reproduced below :—

"The petitioner's claim for over-time wages under S. 33-C has been dismissed. It is admitted in the petition that according to the order of the management the petitioner's duty hours are counted only when he is driving the vehicle on tour. This practice has continued right from 1962. The petitioner is paid Rs. 30/- per month as discomfort allowance as also T.A. and D.A. The terms of employment do not show that the petitioner is entitled to any overtime for any period when he is not driving the vehicle. If the petitioner has any grievance, he can raise an industrial dispute. In case the Government refuses to refer an industrial dispute, the petitioner's remedy may be to approach this Court under Article 226 of the Constitution. The proceedings under Section 33-C(?) of the Industrial Disputes Act are in the nature of execution proceedings and, in our opinion, the petitioner's case is not covered by that provision.

The petition is dismissed summarily."

5. Workman Shri Parihar and another filed another writ petition M.P. No. 2756 of 1985 dated 14-8-1985 before the Hon'ble High Court of M.P., Jabalpur on the refusal of Government to make reference on the failure report of Conciliation (Ex. M-10). However in the meantime the Central Government, Ministry of Labour made this reference under consideration. Therefore on 1-9-1986 on the statement of the workman the Hon'ble High Court dismissed the petition as having become infructuous (Ex. M-11). Thus the objection regarding the pendency of M.P. No. 2756 of 85 (Ex. M-11) also become infructuous.

6. The case of the LIC is that the present reference is highly belated and barred by the principle of res-judicata, estoppel, laches and is squarely covered by the earlier decision between the parties. It is further the case of the LIC that as per the administrative instructions issued under said Staff Regulations as amended from time to time, at headquarters the normal duty hours of the workman were from 9.30 A.M. to 5.30 P.M. and while on tour the mobile van staff including the driver was expected to work for 8 hours spread over in two parts. The programme was scheduled in such a manner that it was convenient to all the members of the team. As per

Life Insurance Rules, Establishment Regulations and Administrative instructions overtime is not paid to their employees for their normal and general duties. Normally whenever they are asked to work beyond their duty hours specific sanction of the competent authority is required to be taken. In exceptional circumstances when the workman was actually required to drive the vehicle more than 8 hours in a day, the overtime wages in respect of driving in excess of 8 hours were paid to him. In cases of unseen emergencies and exceptional cases, the workman is granted compensatory day off in lieu of work done in of the normal duty hours. The workman while on tour is compensated by grant of T.A. and D.A. and discomfort allowance (please see Ex. M-5, M-6, M-8, M-9 and Ex. W-6 to W-12).

7. The workman is neither an office bearer nor the member of the Insurance Workers Union which has sought this reference. The reference is, therefore bad in law for misjoinder of parties.

8. For the reasons aforesaid workman is not entitled to any overtime as claimed by him.

9. The case of the workman is that since he is employed as a driver, he was required to report for duty half an hour earlier for cleaning and keeping the vehicle ready from 9.30 A.M. to 5.30 P.M. while in headquarters for which no overtime was paid to him. While on tour workman had to make himself available for work at the instructions of his superiors. He used to drive the mobile van and Jeep and maintain the publicity Van and to fill up the log book of each vehicle. Thus he had to remain continuously on duty for 24 hours and watch the vehicle even when he was not physically driving the same. Yet as per the said circular dated 9-9-1971 his duty was only counted as long as he was sitting on the steering. The tour days are approximately 15 to 20 days in a month. While on tour he had to help his officers while exhibiting cinema. The duties of Mobile Publicity Van/Jeep drivers was laid down by duty list dated 18-12-1962 (Ex. M-4) at the time of his appointment vide Ex. M-3.

10. Circular dt. 9-8-71 (Copy of which is Ex. M-8) is as follows "Jeep and Mobile Van Drivers; OT will be allowed only for number of hours which they are required to drive Jeep or Mobile Van, in excess of 8 hours." This circular was issued much after the "Service conditions" were already laid down in his appointment order Ex. M-3 dated 20-12-62. This amounts to changing the service conditions of the workman without any notice in contravention of the provisions of Schedule IV and Sec. 9-A of the I. D. Act, 1947.

11. Looking to the orders of Hon'ble High Court (Ex. M-2 and M-11) the objection of the LIC regarding resjudicata, estoppel and laches are worthless. The earlier adjudication was a monetary claim of overtime under Sec. 33-C(2) of the I.D. Act. On the other hand the present reference is regarding the system of fixing the working hours of the workman in such a way so that he may not get overtime. Thus the claim and the subject matter of the application

under Sec. 33-C(2) and Sec. 10 of the I.D. Act are entirely different. In any case the principle of resjudicata is not applicable in industrial disputes.

12. I framed the following issues and with the consent of the parties tried all the issues together which with my reasons and findings are as under :

Preliminary Issues Dt. 9-3-1987.

1. Whether the reference is barred by the principles of resjudicata ?
2. Whether the workman is no more the member of the Union which sought the reference ? If so, its effect ?

Additional Issues Dt. 14-4-1987.

1. Whether the action of the management in denying overtime under the present system of calculation of duty hours to Shri P.S. Parihar, Mobile Van Driver is justified ? If not what would be the system to be adopted ?
2. Relief and costs.

Reasons for my findings—Additional Issue No. 1 :

13. It is convenient to take up additional issue No. 1 first.

In support of his case the workman Phooi Singh Parihar gave his own statement and relied on documents Ex. W-1 to W-13. On the other hand management examined its Publicity Officer Shri R. R. Bhargava M. W. 1 and relied on documents Ex. M-1 to M-11. In his statement workman has admitted that when on tour he got T.A., D.A., discomfort allowance and compensatory off throughout the relevant period. The management also paid his driving licence fees. He has further admitted that the duty hours of Class IV employee are from 9.30 A.M. to 5.30 P.M., when in Headquarters with 45 minutes break. Thus these matter are no longer in dispute and I need not burden the record with the documents and evidence relied on by the parties in this regard.

14. I will only take up the relevant documentary and oral evidence. Workman Shri P. S. Parihar has further stated that he has to go on tour with officials and as a Driver he has to remain on duty with them till they return back to the Headquarters. Sometimes he has to remain on tour for 15 to 20 days continuously and he has to go with the officials in the day or at night according to their tour. When he goes on duty with the Cinema Van beside driving he has to lift the Cinema equipment, set it for the show and remain on guard at the Cinema and also on the vehicle. Same thing is repeated on return from the show. His duties are shown in the log book maintained in the vehicle. He has further stated that before going to tour he has to reach an hour before the office hours to clean the vehicle but the department treats him on duty while sitting on the steering wheel for 8 hours only.

15. Ex. M-4 is the duty list of drivers which goes to show that besides upkeep and the maintenance of the vehicle and log-book the drivers of the mobile publicity van have to further do the duties number

1 to 4, 8 and 10. Similar is the position of the Publicity Jeep Driver. The duties are as follows :—

- “1. To look after the van and the entire luggage and cine equipment in the Van at all times.
2. To help starting the generator and look after its oil and petrol needs during the film show programme.
3. To help in taking out the cine equipment for the film show and packing the same after the programme is over.
4. To help starting the amplifier fitted into the Van by fixing the Units on the loud speaker horn mounted on the Van.
.....
8. To help the projectionist in organising the cine equipment and starting the programme.
.....
10. To carry out the orders and instructions given by the Officer-Incharge and the Projectionist.”

This documentary evidence corroborates the statement of workman.

16. Shri R. R. Bhargava stated that Ex. M-1 is the log-book for the period from 11-6-77 to 22-1-87 in which the period of driving duty in the span of 12 hours is recorded which goes to show that the workman never drove the vehicle for more than 8 hours a day within a span of 12 hrs. He was cross-examined on the basis of Ex. M-1. He admitted in his cross-examination that on 10-2-79 there were 7 entries for the day during which the vehicle covered 91 Kms. but the total period of driving is shown to be 4.05 hrs. only. He was also shown the jeep log-book (which of course he did not maintain) and he had to admit that the entries go to show that the workman on 23-2-86 was on duty from 8.00 a.m. to 10.00 p.m. but the total driving period as per the log book of Jeep No. UGR-7276 (Ex. M-2) was 4.55 Hrs. through the vehicle covered 226 Kms. journey. He had to also admit that he does not know that he was paid overtime for the above period or not. He was also cross-examined regarding the log-book of the Jeep No. MPQ-8947 and he had to admit that entry dated 1-12-83 goes to show that on that day workman was on duty from 7.00 A.M. to 12.00 midnight but total driving period is 5.50 hours only, though the vehicle covered 155 Kms. on that day (Ext. M-3).

17. The above sample entries illustrate that the system of calculation of overtime of Jeep and Mobile Van drivers only for number of hours for which they were actually on steering wheel and were physically required to drive the vehicle were counted as duty hours and for the purpose of overtime. It virtually amounts to treatment given to bonded labour. It is neither just and proper nor conducive to social justice. In this regard representation dated 27-2-73 Ex. W-13 of workman can not said to be a tall claim and unjustified.

18. The contention of the management is that the workmen are being paid as per the said regulation for which the LIC under the Act as amended from

time to time was empowered to issue instructions thereunder. Therefore the same are binding on the workmen as a service condition and he cannot claim anything more than what is laid down by the regulation. It has been further contended on behalf of the management that besides the daily allowance the workman gets discomfort allowance @ Rs. 30/- per month while on tour. During tour drivers cannot have any fixed duty hours therefore they are only entitled to overtime when they actually drive the vehicle for more than 8 hours during two spells of the day. The time spent while waiting in the vehicle does not constitute duty. The T.A. and D.A. and the discomfort allowance disentitles the driver to get overtime. I am unable to accept the above contentions. The T.A. and D.A. is paid to the outdoor personnels for the food and accommodation at the outside station and it is not meant to be a substitute for overtime. The driver concerned is required to work for several hours a day extending from 8.00 A.M. to 10.00 P.M. and 7.00 A.M. to 12 Midnight excluding launch hours as is even admitted by the management's witness Shri R.R. Bhargava. M. W.I.

19. Admittedly the working hours of the drivers is only 8 hours but in my opinion the management is bound to pay overtime for any extra work done in the extra hours beyond 8 hours at the rates admissible as per the rules of the Corporation. It matters little whether they work at the office of the headquarters or while on tour with development or other officers. The crux of the matter is that if they do extra work beyond 8 hours they must be paid extra for their extra work like any other staff members of LIC and they should not be discriminated upon.

20. The stand of the LIC that they cannot have fixed hours during tours itself goes to show that stand of the management in this regard is not correct. It is wrong to assume that drivers are not supposed to be on duty at all when he sits inside the vehicle or near the vehicle for the security and safety of the same for hours together till the officers return. The contention of the LIC that only period of actual driving will count for duty and period of time in two spells of driving are to be ignored while computing the duty hours for payment of overtime and that the time spent waiting in the vehicle does not constitute the duty, is, in my opinion against the principles of social, natural justice, equity and good conscious as such it cannot be accepted. The duties of drivers concerned on tour cannot be divided into two portions—one actual driving and the other in the vehicle sitting at the command of the officers... Form practical and human stand the duty of driver comes to an end only when he is released by the officer and the vehicle is put in the garage.

21. To my mind it is not a case where the question of violation any Act, Rule or Regulation is involved. It is only the wrong interpretation of the staff regulation in the garb of administrative instructions by the management of LIC which is required to be corrected so as to bring it in tune with social justice etc. The Corporation contents that payment of overtime to the employees are governed by the administrative instructions issued from time to time. A reasonable interpretation must be given to the aforesaid clause of the establishment manual circulated on 9-11-71. The

correct interpretation to my opinion would be that the overtime be paid to the drivers concerned for number of hours for which they are required to be on their vehicle whether actually driving on road or sitting in or near the vehicle at the command of the officer with whom he goes on tour. This interpretation to my mind is the only interpretation in consonance with justice and common sense. Even if there be any doubt about interpretation its benefit should go to the weaker section of the society namely the drivers.

22. On behalf of the management it has been urged that the workman is being paid as per the said Regulation, which the LIC under the Act, as amended from the time to time, was empowered to issue. The LIC issued the instructions which are in issue and as such these instructions are binding as condition of service on the workman.

23. On the other hand the stand of the workman is that payment of overtime is proved from Ex. M-3, M-4, W-3, W-4, W-6 and W-12. Therefore this plea is ruled out that the workman and other employees of his department can not get overtime. The contention of the workman is that overtime is condition of service as it falls under item No. 3 of item No. 1 of the IV Schedule under Sec. 9 of the I.D. Act. This condition of service cannot be changed without notice under Sect. 9A of the I.D. Act. In this connection it has been pointed out that the workman was appointed in the year 1962 and the said circular came into force on the 9th November, 1971 whereby the service condition of the workman were changed. This change could not have effected unilaterally without a notice under Section 9A of the I.D. Act. Therefore, the said circular being in contravention of the provisions of I.D. Act is illegal, void and is liable to be quashed.

24. It is the case of the workman that his above plea finds support from the Award dated 4-10-82 passed by the Central Govt. Industrial Tribunal, Calcutta in Reference No. 24 of 1979 in the case of Employers in relation to the management of L.I.C., Jalpaigudi Division and their workman which has been affirmed by the Hon'ble High Court of Calcutta by rejection of Writ Petition of the Management vide Ext. W-1 dated 20-6-86. In the Award dated 4-10-86 the Central Govt. Industrial Tribunal, Calcutta had observed :

"5. The Corporation next contends that the concerned workmen have no legal right to the overtime wages. This is wrong. Payment of overtime allowance is, in my opinion a condition of service. It will be a matter covered by item No. 3 of item No. 1 of the Fourth Schedule under Sec. 9A of the Industrial Disputes Act, 1947. This condition of service cannot be changed without giving any notice under Section 9 of the said Act. Admittedly no notice under Section 9A was given. It cannot be changed by an unilateral action of the Corporation. Hence the circular dated 9th November, 1971 is bad in law and must be quashed. The concerned workmen are, in my opinion, entitled under law to get all the overtime wages due to them, from January 1975 till date and onwards

(until the condition of service is changed according to law) at the rate admissible as per rules of the Corporation and at which it was being paid to them prior to January, 1975."

25. The above contention of the workman is challenged by the management on the ground that this Tribunal is not bound by the decision of another Tribunal. I agree, but if the reasoning appeals to the minds of this Tribunal then, it ought to be given a due weight specially if it finds support from the judgement of Calcutta High Court and even from the direction of the Hon'ble High Court of Madhya Pradesh which is binding on this Tribunal. In Writ Petition No. 137 of 1983 (Ex. W-2) the Hon'ble High Court of M.P. has given the direction and observed :

"If the petitioner has any grievance, he can raise industrial dispute. In case the Government refuses to refer the industrial dispute, the petitioner's remedy may be to approach this Court under Art. 226 of the Constitution."

The Central Government in the ministry of Labour has, therefore, referred this dispute to this Tribunal under Sec. 10 of the I.D. Act, 1947. I hold and decide this issue accordingly in favour of workman. Preliminary Issue No. 1 :

26. Next I will take up issues regarding principles of res-judicata etc. In this regard the contention of the management is that the order Ex. M-1 of my learned predecessor goes to show that the overtime was claimed by the workman and it was found by my learned predecessor that the applicant has failed to prove both the issues that he worked overtime and that he is entitled to the same. It is further urged that Ex. M-2 the order of the Hon'ble High Court of M.P. goes to show that the writ of the workman against the order Ex. M-1 was also rejected as such the claim of the workman is barred by the principles of res-judicata.

27. On the other hand the contention of the workman is that the claim in the earlier adjudication was for recovery of monetary benefits for the work done by the applicant overtime while in the present case, the system of fixing number of working hours of the workman in such a way that he may not get overtime allowances, is involved, thus both these claims are entirely different.

28. It has been further pointed out that the earlier application was under Section 33-C(2) of the I.D. Act and the Hon'ble High Court of M.P. in the Writ Petition (M.P. No. 13 of 1983) was pleased to direct the workman that if the petitioner has any grievance he can raise an industrial dispute since the petitioner's case is not covered under Section 33-C(2) of the I.D. Act. It has been further pointed out that the principles of res-judicata does not apply to the industrial disputes.

29. I have already reproduced the relevant order passed on by the Hon'ble High Court of Madhya Pradesh in M.P. No. 137 of 83 (Ex. M-2) and the contention of the workman appears to be correct to

a limited extent. It is now well settled that there is no limitation prescribed for an application under Section 33-C(2) of the I.D. Act and the workman can file successive application for claim not covered under the previous application. The principle of res-judicata is a rule of evidence and it applies to the proceedings under the I.D. Act. I have given my earnest thought to this problem and I am of the opinion that the previous proceedings of the workman Ex. M-1 were for the period relating to 1962 March to 1972 onwards (Please see paras 8 of Ex. M-1) and the claim of the workman for overtime was rejected on merits by my learned predecessor on 3-8-1982 which was upheld by the Hon'ble High Court in M.P. No. 137 of 83 (Ex. M-2). However the Hon'ble High Court has dismissed the Writ Petition of the workman on the legal ground only that the petitioner's case is not covered by the provisions of Section 33-C(2) of the I.D. Act, and if the petitioner has any grievance he can raise an industrial dispute. This direction thus entitles the workman to raise an industrial dispute but for the period not covered by the earlier application. To my mind, since the claim of the workman was considered and finally rejected under Section 33-C(2) of the I.D. Act on 3-7-1982, the workman cannot re-agitate the issue for the period upto 3-8-1982. The claim up to 3-8-1982 is barred by the principle of res-judicata. But this reference under Section 10 of the I.D. Act being in accordance with the directions of the Hon'ble High Court cannot be said to be barred by the principle of res-judicata. I hold and decide this issue accordingly.

Preliminary Issue No. 2 :

30. It is not disputed that the workman is no more the member of the union which has sponsored the reference. In this regard the management of LIC vide application dated 9-2-1987 have stated that they have received a letter dated 6-2-1987 from the General Secretary, Insurance Workers Union, Jabalpur that the workman is not their member and they are not interested in safeguarding his interests. Question arises what is the effect of this application on the present proceedings and whether the reference is bad in law for misjoinder of parties. To my mind law on the point is well settled. It is not necessary that same union should remain in charge of the dispute till adjudication. In this connection the distinction between espousal and representation is to be borne in mind. The dispute may be espoused by the workman of an establishment through a particular union for making such a dispute an 'industrial dispute' while the workman may be represented before the Tribunal for the purpose of Section 36 by a member or executive or office bearer of another union. The crux of the matter is that the dispute should be a dispute between the employer and his workman. It is not necessary that the dispute must be espoused or conducted only by a registered Trade Union. Even if the trade union ceases to be registered trade union during the continuance of adjudication proceedings, that would not effect the maintainability of the order of reference. It may happen in some cases that a number of workmen of an establishment may take up a dispute of an individual

workman and thus make it an industrial dispute. The Law of Industrial Disputes by O. P. Malhotra Fourth Edition Vol. I para (ii) of page 155 and the Bombay Union of Journalist Vs. the Hindu 1961-I-LLJ-288 at page 294 (Madras D.B.) relied.

31. In the instant case admittedly the reference was sponsored by the General Secretary of the Insurance Workers Union. His subsequent withdrawal from the dispute does not effect the maintainability of the order of reference. Management of Gammon India Ltd. Vs. State of Orissa (1974-II-LLJ-34-pages 35 and 36-Orissa). I hold and decide this issue accordingly.

Additional Issue No. 2 :

32. The reference as it is made is regarding the system which is being adopted by the management of LIC, which was not covered by the previous adjudication directly. Yet to my mind previous adjudication basis the claim of overtime for the period upto 3-8-1982. Therefore, this award will apply for the period after 3-8-1982. The reference as it stands raises many questions, I will answer the same one by one. The first question is that whether the action of the management of LIC of Jabalpur (M.P.) in denying overtime under the present system of calculation of duty hours, to Shri Phool Singh Parihar, Mobile Van Driver is justified. For the reasons aforesaid I hold that the present system of calculation is not justified. The second question posed is, if not, what would be the system to be adopted and what would be relief to the workman concerned and from what date.

33. The concerned workman is entitled to get overtime allowance for all the work done by him whether at Headquarters or on tour in excess of 8 hours a day w.e.f. 4-8-1982 at the rate admissible as per rules of the corporation applicable to class to which the workman belongs as per the log books of the vehicles concerned. The present system, which is being adopted, being in contravention of Section 9A of the Industrial Disputes Act is, illegal, unjust and improper.

I make the award accordingly.

No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-17012/6/84-D.IV(A)] [IR(B)-I]

का. प्रा. 232--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुकरण में केन्द्रिय सरकार कर्नाटक बैंक लिमिटेड, मंगलूर के प्रबन्धक के संलग्न नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है।

S.O. 232.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Industrial Tribunal, Karnataka as shown in the annexure, in the industrial dispute between the employers in relation to the management of Karnataka Bank Ltd., Mangalore and their workman.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE.

Dated the 2nd November, 1983

PRESENT

Shri B.N. Lalge, B.A. (Hons), L.L.B.

Presiding Officer

Central Reference No. 156/87

I PARTY

II PARTY

Shri Eric Alexander Ozario
"Asra", Seminary View, Vs.
MANGALORE 575 002.

The Chairman,
Karnataka Bank Limited,
H. O. Mangalore 575 003.

APPEARANCES

For the I party Shri K. S. Nambiar, Advocate.
For the II party Shri K.S. Bhat, Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its order No. L-12012/58/87-D. IV (A) dated 18-9-1987.

POINT OF REFERENCE

"Whether the action of the Management of Karnataka Bank Limited, Mangalore, is justified in dismissing Shri Eric Alexander Ozario, with effect from 22-8-1986? If not, to what relief the workmen is entitled?"

2. The I party workman has filed his claim statement and the statements, he has made in brief, are as follows :

He was appointed as a clerk in the II party Bank in 1972. Since then, he is in continuous service till 22-8-86, when he was dismissed. The II party was harassing him in all the ways. He had sent his representation to the management. On 20-3-1986, the General Manager issued a chargesheet, alleging that he was deliberately putting his signatures in a different style and that he had torn away a memo dated 21-4-1986. On 21-3-1986, the General Manager issued another chargesheet, alleging that on 19-2-85 he had left the office at 4.05 p.m. without permission. He has sent a reply dated 26-3-86, denying the charges. On 11-4-1986, the General Manager sent another chargesheet alleging that he had addressed letter to the management, making certain allegations. On a letter dated 16-4-86 he sought for time

to give his explanation. Another chargesheet dated 16/21-4-86 was issued to him, alleging that he had refused to sign in the acquittance register and he had torn a letter dated 19-12-1985. Still another chargesheet dated 16/21-4-86 was issued to him, alleging that he is carrying on business and undertaking party arrangements for birth day, house warming, engagement, wedding etc. He sought for 30 days time by a letter dated 2-5-86. On 6-6-1986, the General Manager informed him that Shri Seva Nemiraja Malla had been asked to hold an enquiry. On 12-6-86, he had sent a letter to the General Manager, stating that Shri Seva Nemiraja Malla cannot hold an enquiry and he had his objection for his appointment as an Enquiry Officer. He also informed the management that the charges are unrelated and it is necessary to hold separate enquiries. He apprehended presence of police at the time of enquiry. On 26-6-86, he addressed a letter to the Enquiry Officer to postpone the enquiry, till the management takes a decision on his objections. Copies of the same were sent to the General Manager and Assistant Labour Commissioner. On 10-7-86, he wrote to the General Manager, objecting the appointment of Shri Seva Nemiraja Malla as the Enquiry Officer. On 12-7-86, he sent another letter to the Enquiry Officer, stating that the enquiries made by him have not been clarified. A copy of the same was sent to the General Manager. The management did not appoint any other Enquiry Officer. It is alleged that the Enquiry Officer has held an enquiry against the principles of natural justice. The list of documents and witnesses were not furnished to him. The Enquiry Officer was biased. His conclusions are erroneous. The Enquiry Officer has pre-judged the matter. The II party dismissed him as per the order dated 22-8-86. He filed an appeal. It was dismissed. Since, then, he is without employment. The punishment is disproportionate. An award may be passed to reinstate him with all the consequential benefits.

3. The II party has filed its counter statement and inter alia, it is stated as follows :

He was appointed as a clerk on 12-12-1972. From 15-5-1979, he was working in Bejai branch. The management was receiving complaints against him for his unsatisfactory behaviour, arrogance and impertinence. In spite of counselling, he did not show any improvement. He became more unmanageable and started giving scant regard for the discipline of the branch. For various acts of misconduct, five chargesheets were issued to him. They are dated 20-3-86, 21-3-86, 11-4-86, 16/21-4-86, another one dated 16/21-4-86. When the Manager issued him a letter, calling upon him to sign in the acquittance register, he tore off the letter with utter contempt and called the manager and questioned the manager about his capacity. The explanation given by him for some of the charges was not satisfactory. It was decided to hold an enquiry. By a letter dated 6-6-86, he was informed that Shri Seva Nemiraja Malla was appointed as the Enquiry Officer. The said officer is appointed on contract basis in a special cadre. He is a retired District and Sessions Judge with rich experience in the judicial matters. After due notice, the enquiry was held by the Enquiry Officer. The I party chose to remain absent on untenable grounds.

The Enquiry Officer had no other go than to place him *ex-parte*. Still then, he was intimated about the dates of enquiry from time to time. The enquiry has been held in accordance with the law. After the enquiry, report dated 7-8-86 was submitted. On careful examination of the report, the disciplinary authority accepted the findings and it was proposed to dismiss him from service. Second show cause notice dated 8-8-86 was issued to him. He appeared before the General Manager on 16-8-86 and gave a written submission. After examining of the records and the written submission, the management came to a conclusion that the punishment of dismissal is the proper one and he was dismissed by an order dated the 22nd August 1986. He had preferred an appeal. The chairman heard it on 27-10-86, in person. The chairman found that there was no reason to interfere with the order of the General Manager. It was rejected on 4-11-1986. The various allegations made by him are denied. It is denied that he is without any employment since then. It is denied that the order of dismissal is disproportionate. If the court holds that the enquiry is not valid, opportunity may be given to adduce evidence. The I party is not entitled to any relief. The reference may be rejected.

4. In view of the said pleadings, one additional issue as shown below was drawn up :

“Whether the II party proves that it has held the domestic enquiry in accordance with the law?”

5. It was taken up as a preliminary issue.

6. The management examined two witnesses and got marked Exs. M-1 to M-35.

7. The workman has examined himself and got marked Exs. W-1 and W-2.

8. The parties were heard.

9. By a considered order dated 15-7-88, a finding has been recorded on the said issue that the domestic enquiry held by the II party is in accordance with the law.

10. The parties were, however, permitted to adduce further evidence, if any and argue.

11. Neither party has adduced any additional evidence.

12. They have been heard.

13. My finding on the point of reference is as follows :

“The Management of the Karnataka Bank Limited, Mangalore was not justified in dismissing Shri Eric Alexander Ozario, with effect from 22-8-1986, for the reason that the punishment is not commensurate with the acts of misconduct committed by him. The proper and reasonable punishment is of discharge as per Clause 19.6(e) of the Bipartite Settlement.

REASONS

14. The learned counsel for the I party contended that the findings of the Enquiry Officer are perverse.

There is a two-fold test of perversity. The first test is that whether the findings of the Enquiry Officer are based on no evidence or the evidence which was not legally admissible. The second test is that whether on the basis of the material placed on record before the Enquiry Officer, any reasonable person could arrive at the said findings.

15. Ex. M-22 is the report of the Enquiry Officer. Before the Enquiry Officer, as many as nine witnesses were examined by the management. The management got marked about thirty-two documents. The Enquiry Officer has marked them as Ex. M-1 to Ex. M-32. The learned counsel for the I party did not point out to any oral evidence of these nine witnesses or to any of the documents of Exs. M-1 to M-32 marked by the Enquiry Officer to show that any part or piece of the same was inadmissible. Thus, it is not a case where the Enquiry Officer has based his findings, on evidence which was not admissible in law.

16. The first chargesheet issued against the I party is dated 20-3-1986. In the bunch of papers marked as Ex. M-21 series, he said chargesheet is at page 19. It is marked by the Enquiry Officer as Ex. M-11. The second party has alleged that he was putting his signatures and initials in different styles with a design and that when the Branch Manager delivered a letter to him on 21-4-86, advising him to submit the specimen signature, he acknowledged the letter once again by putting his initials in a different style, and he immediately tore off the memo served on him in utter disregard. It is further alleged that he did not submit his explanation to the memo dated 4-2-1986. The management alleged that putting initials or signatures in different styles was prejudicial to the interests of the bank and it constituted gross misconduct under Para 15.5 (j) of the Bipartite Settlement. It is further alleged that his conduct in tearing off the memo amounted to gross misconduct as per Para 19.5 (e). In that connection, MW-1 Sri J. Seetharam, the Manager stated before the Enquiry Officer that he gave the memo to the I party but he tore it off. The evidence recorded by the Enquiry Officer is at Ex. M-20 series. The evidence of Seetharam, the then Manager of the Bijai Branch discloses that the I party was putting his initials and signatures in different styles and he instructed him to put them in a uniform manner as per the letter Ex. M-1 and that he had further reported it to the head office as per Ex. M-2. His evidence further shows that the Head Office in terms wrote to the I party as per Ex. M-3. But on the back side of Ex. M-3, the I party put his initial, again in a different style. The management has produced the delivery book and on page 125 at Sl. No. 1957, he has put his initials in a different style. The original delivery book is produced before this Tribunal also. Then there is a reference to pages 153, 155, 157 and 133 of the delivery book. The initials put by him at Exs. M-4 to M-7 differ from each other. His specimen signature was produced at Ex. M-8. On comparison of these initials and signatures, it is apparent that they do not bear any similarity with each other. Thereafter, the MW-1 Sri J. Seetharam reported the matter to the head office, as per Ex. M-9. The Head Office served a memo on him as per Ex. M-10, but the I party did not send

any reply. The management has then issued the charges act Ex. M-11. The I party employee did not send his reply to Ex. M-11. In his letter dated 27-3-86, Ex. M-25, he has alleged that they are all cooked up charges and that the management should stop harassing him and withdraw all the chargesheets. In para 11 of his report Ex. M-22, the Enquiry Officer has observed that as compared to the specimen signatures and initials of the employee at Ex. M-8, he has put his initials and signatures in a different style in documents such as Ex. M-3 to M-8. In the light of the evidence of MW-1 Seetharam, the Enquiry Officer has observed that even though the said fact was brought to the notice of the employee, he did not rectify, but on the contrary, he tore off the memo issued to him. The documents at Exs. M-1 and M-9, which were the memos issued to the I party and Ex. M-10, the report of MW-1 substantiate the evidence of MW-1 Seetharam. Taking into account all these factors, the Enquiry Officer has held that the charges levelled against him in Ex. M-11 have been established. I do not find that there is any inconsistency or unreasonableness in the method adopted by the Enquiry Officer for appreciating evidence and holding him guilty of the said charge.

17. The second chargesheet is at Ex. M-15 dated 21-3-1986. It is alleged that on 19-12-85 at about 4.05 p.m. he went away without the permission of his superior officer and in spite of asking him for giving his explanation by a memo dated 21-1-86, he had not explained about it and thus he committed an act of misconduct under para 19.5 (e). The Attendance Register Ex. M-12 and the evidence of MW-1 Seetharam show that on 19-12-85, he went away at 4.05 p.m. without the permission of the Manager. There is no explanation submitted by him in that regard. In para 13 of his report, Ex. M-22 the Enquiry Officer has held him guilty of the said charge.

18. The third chargesheet Ex. M-26 dated 11-4-86 shows that the management alleged that the employee had indulged in writing to the management in highly objectionable language unbecoming of a subordinate employee and sought to insult and undermine the management by making unfounded imputations and thus he committed an act of misconduct under Para 19.5 (e).

The reference made by the management in this chargesheet is to the letters Exs. M-24 and M-25. Ex. M-24 is addressed to the Personnel Manager of the II party, whereas Ex. M-25 is addressed to the General Manager. Ex. M-24 reads as follows :

From :

Eric Alexander Ozario,
Staff No. 1236,
Karnataka Bank Ltd.,
Bijai,
MANGALORE-575004.
To :

The Personnel Manager,
Karnataka Bank Ltd.,
H. O. Kodialbail,
MANGALORE-575003.

Sir,

94 GI/90—12.

Once again you have indulged in your favourite pastime viz; postponing the due date of my annual increment and reserving your rights to take disciplinary action against me. It is very evident now, that if you are allowed to have your way, I would never get another increment for the remaining part of any working career and will forever live under the constant threat of your disciplinary actions. The vindictive tone of your letters and your highly arbitrary, provocative, illegal and therefore detestable actions show that you are under the impression that laws belong to you, the bank belongs to you and that, you own me. That I have not raised my voice in protest against all your vile manoeuvres does not mean that I am incapable of defending my rights and you can do with me as you please. Stop this nonsense immediately.

You have taken such liberties with me as to encroach upon my personal liberties. You declare me medically fit when competent doctors say otherwise and now you tell me that henceforth you have delegated your responsibility of my medical care to someone I don't even know, much less, have confidence in, under threat of gravest consequences. My health is my business. Not yours not the bank's and nobody tells me whom to consult in the event of my falling ill. As for your threats of disciplinary actions, I am by now so used to them that without being threatened at least once a day, there does not seem to be any charm in coming to the bank.

Sd/—

(ERIC OZARIO)

Ex. M-25 reads as follows :

“REGISTERED A.D.

From

Eric Alexander Ozario,
Staff No. 1236,
Karnataka Bank Ltd.,
Bijai,
MANGALORE-575004.

To

The General Manager,
Karnataka Bank Ltd.,
H.O. Kodialbail,
MANGALORE-575003.
Sir,

For the last 4 months I have been incessantly bombarded with a barrage of notices, memos, chargesheets and the like, intimidating me, threatening me and foreboding consequences grave, dangerous and extreme, holding-out threats of disciplinary action, stringent punishment and summary dismissal, on charges, allegations and purported acts of omission and commission— conjured, concocted and fabricated with malicious, malignant and dubious intent; the Manager, the Personnel Manager and the General Manager alternatively jumping into the act. Though, initially, I chose to bear it in silence considering it as another gimmick of the management to announce its existence, and therefore ignored all provocations, now that the drizzle has turned to torrent and torrents to floods, I am jolted into the realisation that I am a prey to the sinister designs of a well thought-out, pre-meditated, diabolical plan to harass, brow-

beat, provoke, torment and torture, oppress and ultimately cheat me of my only means of livelihood.

Even though why, the management in all its draconian wisdom has singled me out for this special treatment, is not very clear at this stage of the drama, what is clear is that the management has made it almost impossible for me to work under these circumstances—where the management has gone to the extent of issuing me the same notice twice just to keep-up the pressure of the attack whenever it ran out of ideas and inspiration to cook-up new charges. To top it all, I have ever been refused payment of salary on the day it is due to me right from December 1985. My name has been struck-off from the Acquittance Roll and I have been refused access to all records and files concerning me. All this has caused me immense mental agony, has created a sense of insecurity and an uncontrollable feeling of disgust towards a management which lacks the capacity to discern the capable from the incapable, right from wrong or good from bad.

I therefore, in the name of justice, fair-play, sanity, and as a matter of right, demand--

1. Withdraw immediately all charges, allegations and accusations levelled against me.
2. Stop Harassing me forthwith.

Failing which, I will be constrained to take up all such measures that I deem fit to protect my interests and the interests of those who are directly or indirectly dependent on me. I also, in the interest of the institution and my unfortunate colleagues who suffer a criminal treatment, suggest that you make-way for a insaner, effective and proper administration, by handing over charge to people who have the basic intelligence to understand that they are running a bank and not a jail and are administering a class of people who in their attempt to make both ends meet are genuinely and honestly striving to give their best; and not a bunch of thieves.

Sd/-

(ERIC OZARIO)"

The letters are eloquent enough in showing that the I party employee has treated his superior officers and the management in a manner which is unbecoming of an employee, holding a post of a clerk, and even, supposing that he had some genuine grievance against his superior officers and the management, there were legitimate ways and means to give vent and seek redress, but the method adopted by the employee has landed him to face one more charge against him. The evidence of MW-1 and MW-9 and the Exs. M-24 and M-25 establish the charge levelled against him in Ex. M-26.

19. Ex. M-30 is the fourth chargesheet issued to him. It is dated 16/21-4-1986. It is alleged that he was carrying on business in the name and style of "celebrations" and undertaking party arrangements for functions such as birth day, house warming, engagements, weddings, get-togethers, picnics etc. It is further alleged that he had also indulged in arranging for booking halls, catering, decoration lightings

etc., and thus he was charged for misconduct under Para 19.5 (a) of the Bipartite Settlement. On this point, the II party has relied upon the evidence of MW-3 to MW-6 and the documents at Exs. M-20 to M-31 (as marked by the Enquiry Officer) MW-2 K. Omprakash has stated in para 2 of his evidence before the Enquiry Officer that he was aware that the I party employee was carrying on business under the name and style of "celebrations" and that he used to arrange functions and used to do the booking of halls etc. MW-3 K.V. Sharma, Special Assistant of the said branch has stated in para 4 of his evidence that the I party employee was participating in the business named as "celebrations" and that Ex. M-23 is a pamphlet in that connection. He further states that his customers often used to come to the office and therefore he knows about it. He has also stated that the I party used to act as the master of ceremonies in marriage parties and all these services were rendered by him for money. MW-4 Rajagopala Acharya states in para 4 of his evidence that the I party employee was carrying on business called "celebrations" and he used to arrange functions for match making music, catering food and Ex. M-23 is a pamphlet of the said business. He has further stated that the customers used to come to the bank and at that time he has seen the I party giving him the copies of Ex. M-23. MW-5 Kum. H. Sumana has stated in para 4 of her evidence that the I party employee used to have many visitors in the office and he also used to receive many phone calls in connection with his business of arranging marriage functions and he used to distribute the copies of Ex. M-23. MW-6 M. Ramesh Kumar has stated in para 3 of his evidence that the I party employee used to have with him a bundle of pamphlets such as Ex. M-23 and customers used to meet him in the office and also talk with him on phone. He adds that the I party employee used to do the said business for money. MW-9, the Personnel Manager of the II party bank has stated in para 2 of his evidence that he had received a pamphlet as per Ex. M-23 and the General Manager had then sent a letter to the employee as per Ex. M-28. But that he did not send any reply. He further states that another letter was sent on 25-3-86 as per Ex. M-29, but still then there was no reply. His evidence then disclosed that a chargesheet was issued to him as per Ex. M-30 and he has sent his reply as per Ex. M-31. In Ex. M-30 when the employee has stated that the charges are fictitious. In Para 15 of his report, the Enquiry Officer holds that the pamphlet along with the rubber stamp thereon, coupled with the oral evidence has established the said charge. The pamphlet Ex. M-23 shows the name of Ozario and it does not show the name of Eric Alexander Ozario, the employee. No customer who had engaged the services of the employee for such function was examined before the Enquiry Officer. There was no evidence adduced before the Enquiry Officer that they saw any customer making any payment to the I party for rendering the said services. The evidence of the management witnesses has discussed above does not lead to a conclusion that he did receive easy remuneration for such arrangements was doing any kind of business for money and that. Even if it is believed that several persons used to contact him for the said services or that he used to arrange for the same, it is difficult to accept the contention of the management that the evidence

placed before the Enquiry Officer was of such a nature that any reasonable person could have arrived at a conclusion that he had indulged in the business of arranging the functions for money. I find that the finding of the Enquiry Officer on Charge No. 4 with reference to Ex. M-30 cannot be sustained.

20. The 5th charge against him as per Ex. M-20 dated 16/21-4-86 is that even though the salary payable to him for October and November 1985 was credited to his S.B. Account No. 2178 on 30-10-1985 and 28-11-85 respectively, he refused to sign in the acquittance register, in spite of several requests made by the Manager and when the manager issued a letter dated 19-12-85, requesting him to sign in the acquittance register, he tore off the said letter soon after reading it and then went to the Manager and addressed him saying that you Manager, if you have got the power, you take my signatures. It is further alleged that even after the lapse of 4 months, he did not sign the acquittance register and therefore he was charged with the misconduct of insubordination etc., punishable under Para 19.5 (e) of the Bipartite Settlement. The evidence of MW-1 J. Seetharam shows in para 4 that since the employee had failed to put his signatures in the acquittance register for the payment of salaries of October and November 1985, he again asked him in writing, by the original of letter, Ex. M-16, but he did not comply with the same. He further states that then he sent copy of Ex. M-16 along with his report Ex. M-17 to the Head Office. Ex. M-16 dated 19-12-1985 indicates that he was again requested to sign in the acquittance roll within three days. Ex. M17 dated 23-12-85 shows that in spite of a written request made to him, he did not sign in the Acquittance Register. The Manager has then reported as per Ex. M-18 dated 21-3-1986 that when the letter dated 19-12-85 was given to him, the employee tore off the letter and challenged the Manager that if he had the power in his hands, he should see that he puts his signatures. The management again issued him a memo dated 25-3-86 as per Ex. M-19 but he did not bother to explain. The Enquiry Officer has observed that the photocopies of the Acquittance Register at Exs. M-21 and M-22 supported the afore-said evidence and that there is the additional evidence of MW-1 to MW-6 in that connection. On going through the evidence placed on record, I find that the finding of the Enquiry in regard to the fifth charge is supported by sufficient evidence.

21. The learned counsel for the 1 party vehemently contended that the Enquiry Officer was biased and that the findings recorded by him are not sustainable. On going through the evidence of MW-1, the Enquiry Officer and the evidence produced before him, it is difficult to accept the contention that he was biased or prejudiced. The reasoning adopted by him is quite logical and it is supported by concrete evidence.

NO. CGIT/D/1/88

GOVERNMENT OF INDIA

(Ministry of Labour)

Office of the, CGIT, Labour Court,

Bangalore-9

Dated : 22-12-1988.

FROM :

The Presiding Officer,
CGIT, Labour Court,
Bangalore-9.

TO :

K. J. Dyva Prasad,
Desk Officer,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi-110001.

Sir,

Sub : Disposals of awards.

This Tribunal has passed the awards and sent the same to you as shown below. Till today I have not received the notification issued by the Government of India, under Section 17 of the I.D. Act, directing publications of the award in part II section 3, sub-section (ii) of the Gazette of India.

I hope that you will immediately send a copy of the relevant notifications, since they are required to close the matters and consign the files to the record.

PARTICULARS

1. Cr. No. 156/87 Eric Alexander Ozario Vs. Karnataka Bank Disposal Date, 2-11-88.

Order of Ref. No. L-12012/59/87-D.IV (A) dt. 18-9-1987.

2. Cr. No. 40/87 Pattabhiraman Vs. Vysya Bank Ltd. disposal date 1-7-88.

Order of Ref No. L-12012/(8)/85-D. IV (A) dated 16-1-1986.

Yours faithfully,

B. N. LALGE, Presiding Officer

[No. L-12012/58/87-D. IV(A)|IR (B)-I]

का. आ. 233 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, जयपुर, नागौर, औद्योगिक मामलों के, जयपुर के प्रबंधन के लक्षण नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है।

S.O 233.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New

Delhi as shown in the annexure, in the industrial dispute between the employers in relation to the management of Jaipur Nagaur Aanchalik Gramin Bank, Jaipur and their workmen.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, RAJASTHAN, JAIPUR

Case No. CIT 34/82

REFERENCE :

Government of India, Ministry of Labour & Rehabilitation, New Delhi Order No. 12011/77/81-D.II(A) dated 11th November, 1982.

In the matter of an Industrial Dispute

BETWEEN

Gramin Bank Employees Union, Jaipur

AND

Jaipur Nagaur Aanchalik Gramin Bank, Jaipur.

For the Union : Shri R. C. Jain.

For the Bank : Shri C. S. Mehta.

Date of Award : 23rd March, 1987.

AWARD

The Desk Officer, Government of India, Ministry of Labour & Rehabilitation, New Delhi vide his above cited notification has referred the following dispute to this tribunal for adjudication U/s. 10(1) of the Industrial Disputes Act 1947, hereinafter referred to as the Act :

“Whether the demands of workmen of the Jaipur Nagaur Aanchalik Gramin Bank, Jaipur for (a) fixation of the Probationary Period of Clerks, Junior Clerks and Field Assistants as six months, (b) payment of cash allowance of Rs. 25 Cycle allowance of Rs. 20 and officiating allowance at 20 per cent of pay for working in higher grades (c) grant of leave fare concession once in two years up to the limit of 1500 kms. of travel are justified? If not, to what relief are the workmen concerned entitled?”.

2. It may be mentioned at the very outset that three demands covered under the foregoing head (b) in the reference have been met with the result that they no longer form the subject matter of the dispute before me. I have to confine myself only to two demands respectively covered under the head (a) and (c) in the reference.

3. In the statement of claim filed by Gramin Bank Employees Union, hereinafter referred to as

the union, on behalf of the employees, it has been mentioned that the employees are in the employ of Jaipur Nagaur Aanchalik Gramin Bank, Jaipur, hereinafter referred to as the Bank. In the area covered by the bank it does similar business as is done by other banks. The employees themselves discharge duties and perform functions which are discharged and performed by the employees working in other banks. As regards the first demand covered by head (a) in the reference it has been alleged that the present position in the bank is that the employees are kept on probation in the first instance for one year. This period of one year is liable to be extended for a period of six months. This is a practice which is not followed in other banks. The position in other banks is that the period of probation is only for six months at the end of which an employee gets automatically confirmed. As regards the second demand covered by head (c) in the reference, it has been alleged that the facility concerning leave fare concession in two years upto a limit of 1500 kms. of travelling is admissible to the employees of other banks. This facility cannot be denied to the employees of the present bank.

4. In the reply filed on behalf of the bank it has been admitted that the employees are in the employ of the bank. It has been alleged that there is no similarity between the functions of the bank and those of other banks. The probation period has been provided for under the Rules of 1981 which are applicable to the bank. The Rules cannot be subjected to the amendment. It has, further, been alleged that the emoluments of the employees of the bank are fixed by the Reserve Bank, keeping in view the emoluments and service conditions of the State Government employees in the region concerned.

Demand No. 1

5. No evidence has been produced in this case from either side. I have to place reliance upon the documents in the light of the arguments advanced before me. Shri R. C. Jain, learned representative, appearing on behalf of the union has referred me to the text of the paragraph 495 of the Shastri Award as also to the text of the paragraph 21.18 of the Desai Award. He contends before me that as per the Shastri Award the period of probation is six months. This period of six months as per Desai Award is liable to be extended for a period of three months only in a case where the work of the employee is not found satisfactory. These awards are applicable to the employees of the other banks. He contends that these awards should be made applicable to the employees of the bank. He has also contended before me that while fixing the service conditions and emoluments of the employees of an industry the tribunal has to keep in mind the emoluments and service conditions in other industries of similar nature in the region. This principle of industry-cum-region has been elevated to the state of certainty. As against this Shri C. S. Mehta learned representative, appearing on behalf of the bank has referred me to Section 7(2) of the Regional Rural Banks Act, 1976 wherein it has

been provided that no judgment, award, decree, decision or order of any tribunal, court or Authority made before this Act of 1976 came into force, can be made applicable to the Regional Rural Bank and for that matter to the bank itself. Hence, he contends, the Shastri and Desai Awards cannot be made applicable to the employees of the bank. I have given my careful consideration to the rival contentions in order to arrive at the correct conclusion in the case. The contention advanced before me by Shri Jain appears to be correct. It is not in dispute before me that the bank transacts business which is similar to the business transacted by the other banks in the region. It is also clear from the record that the employees discharge duties and perform functions such as those which are discharged and performed by the employees of the other banks. In these circumstances I see no reason why any discrimination should be practised against the employees of the bank. Apart from this Shri Jain has taken assistance from the Desai Award and Shastri Award for the view-point he has, canvassed before me. He does not keep the implementation of these two awards as such. The principle of industry-cum-region is a principle which is to be given effect in a case of this type. I, therefore, hold that this demand is a reasonable one.

Demand No. 2 (c) :

6. Shri S. C. Mehta has frankly conceded before me that this facility with regard to leave fare concession has been approved by the Central Government but it has not been made applicable to the employees of the bank because such facility is not available to the Government employees in the region. This contention goes to show that the demand is very reasonable. The implementation of the scheme approved by the Central Government cannot be made dependent upon the availability or otherwise of this facility to the State Government employees in the region. The Reserve Bank or the Central Government has to take into consideration the service conditions and emoluments which are applicable to the State Government employees in the region, but the service conditions and emoluments of the State Government employees cannot be looked upon as a decisive factor in the matter of granting such a facility to the employees of the bank. This demand is also reasonable and deserves to be accepted.

7. I make the award in favour of the employees and against the bank to the effect that the bank shall fix the period of probation of clerks, junior clerks and field Assistants for six months subject to the condition that where the bank finds the work of an employee unsatisfactory this period of probation shall be liable to be extended for a further period of three months and further the bank shall grant the facility of leave fare concession once in two years upto the limit of 1500 kms. of travel to its employees subject, of course, to the usual conditions.

8. The award may be sent to the Central Government for publication as per law.

J. P. BANSAL, Presiding Officer
[No. L-12011/77/81-D. IV(A) IR(B)-I]

का. प्र. 234—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रिय सरकार नेशनल इन्सुरेंस कंपनी लि. के प्रबंधन से संबद्ध नियोक्तों और उनके कामकाजों के बीच अनुबंध में निहित औद्योगिक विवाद से केन्द्रिय सरकार औद्योगिक अधिकरण, जबलपुर के पक्षों को प्रकाशित करती है।

S.O. 234.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the annexure, in the industrial dispute between the employers in relation to the management of National Insurance Company Ltd. and their workman Shri L. N. Gupta.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R) (64) of 1986

PARTIES :

Employers in relation to the management of National Insurance Company Ltd., K-495, Karam Chand Chowk, Marhtal, Jabalpur (M.P.) and their workman, Shri Laxmi Narayan Gupta, Clerk, Near Congress Office, Company Bagh, Satna (M.P.)

APPEARANCES :

For Workman.—Shri P. N. Dube, Advocate.

For Management.—Shri P. D. Pathak, Advocate.

INDUSTRY : Insurance DISTRICT : Jabalpur (M.P.)

AWARD

Dated : June 24, 1986

By Notification No. L-17012/56/85-D. IV(A) dated 31st July, 1986 Central Government in the Ministry of Labour has referred the following dispute to this Tribunal, for adjudication :—

“Whether the action of the management of National Insurance Company Ltd., Satna in terminating the services of Shri Laxmi Narayan Gupta, Clerk, with effect from 15-2-85 is justified? If not, to what relief is the workman concerned entitled?”

2. Facts which are not controversial are that the workman worked at the Branch Office of the National Insurance Company Ltd. at Satna as a clerk from 20-6-84 to 15-9-84 and 1-10-1984 to 15.2.1985. He had written two receipts dated 17-9-1984 and prepared deposit slips of the same day. For certain period the workman was paid in the name of Shri B. M. Gupta. Salary from 1-2-1985 to 15-2-1985 was sent to the workman by Cheque dated 9-3-1985 but the workman refused to accept the same.

3. The case of the workman is that he refused the salary as the same was not in accordance with rules. In fact, he had worked with the management continuously without any break from 20-6-1984 to 15-2-1985 and he had worked even on holidays and weekly off days. For some period he was paid weekly, later on he was paid monthly on daily rates @ Rs. 16.50 and Rs. 20/- per day. Management also changed his name for the purpose of payment as Shri B. M. Gupta for certain period so that he may not complete the statutory period which amounts to unfair labour practice and an attempt to circumvent the laws. Similar practice was adopted in the case of Ghanshyam Prasad Dehayat and later on he was paid in the name of Shiv Shanker Dehayat. The workman had worked for 241 days with the management and he is entitled to be reinstated with full back wages.

4. The case of the management is that he did not work from 17-9-1984 to 30-9-1984 with the management. It is not true that he was selected by the Selection Committee. It was on his own request that the payment in the name of B. M. Gupta was made. It was only in order to create evidence that he got said receipts prepared earlier and some Motor Policy allotted through him on 18-9-1984 though he was not authorised to work on these dates. The workman had worked for the said period purely on daily wages as a casual worker without any appointment order. Branch Manager in order to clear up the pending work used to attend the office on Sundays and holidays and workman on his own attended the office occasionally without any direction in that regard. In all he had worked for 181 days with breaks. Therefore he cannot be said to be in continuous service and he was not entitled to any retrenchment compensation etc.

5. Question arises whether the services of the workman were continuous within the meaning of Section 25B of the I. D. Act. In this regard workman, Shri Laxmi Narayan Gupta, gave his own statement. On the other hand, management examined Shri Prabhakar and Stephan Tigga, Branch Manager, Satna (M.W. 1 and M.W. 2). Management's witnesses Shri Stephan Tigga, Branch Manager, has admitted that subsequently the workman was paid in the name of B. M. Gupta and similarly the other workman was paid in the name of Shiv Shankar Dehayat. This clearly appears to be a device adopted by the management to defeat the provision of Section 25B of the I.D. Act. Shri Tigga has further admitted the nature of duties performed by the workman, which clearly goes to show that though his appointment was of a temporary nature but he was doing the work of a permanent employee. In the case of Jaswant Sugar Mills Ltd. and Badri Prasad (SCLJ 1950-67 Vol. V page 3474) it has been held that the work is of permanent nature which lasts throughout the year. Management has filed the procedure laid down for appointment of candidates in the Insurance industry of clerical and subordinate staff. Admittedly his appointment was not in accordance with the Company's procedure. However, that by itself will not debar him from acquiring the status of permanent service, Robert D'Souza Vs. Executive

Engineer, Southern Railway (AIR 1982 SC 854). In any case, once the workman sails into the harbour of S. 25B of I.D. Act, the termination for reasons whatsoever will spell retrenchment. Termination for any reason whatsoever are the key words. Whatever the reason except these excepted in the section itself every termination spells retrenchment as defined in S. 2(oo) of the I.D. Act.

6. Next question arises whether his service was continuous or not within the meaning of Sec. 25B of the I.D. Act and he had sailed into the harbour of Sec. 25F of the I.D. Act. Case of the management is that the workman did not work from 17-9-1984 to 30-9-1984. Thus firstly his service was not continuous. Secondly he did not actually worked for 240 days for the purpose of S. 25B of the I.D. Act. To my mind the contention is a flimsy as the device adopted by the management to defeat the provision of S. 25B of the I.D. Act. These artificial breaks were not due to any fault on the part of the workman. Therefore as laid down in Sub-section (1) of Sec. 25B, these artificial breaks notwithstanding his service will be deemed to be continuous.

7. The expression "actually worked under the employer" cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Thus, Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked (Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation — AIR 1986 SC 458).

8. Section 25B of the I.D. Act lays down a deeming fiction for continuous service of one year though actually he may not have worked for a period of one year. It is admitted by Stephan Tigga (M.W. 2) that he worked with them from 20-6-84 to 14-9-1984 and from 1-10-1984 to 15-2-1985. According to him he did not work with them from 17-9-1984 to 30-9-1984. He has also admitted that he was paid in the name of B. M. Gupta. Thus taking all the above period together from 20-6-84 to 15-2-1985, details of which are as under comes to 241 days —

June 1984	—	11 days
July	—	31 days
August	—	31 days
September	—	30 days
October	—	31 days
November	—	30 days
December	—	31 days
January 1985	—	31 days
February	—	15 days
Total days	—	241 days

Regarding the period from 17-9-1984 to 30-9-1984 (paid in the name of B. M. Gupta) have already held that it was a device adopted by the management so that the workman may not complete 240 days continuous service and which amounts to unfair labour practice. Therefore to my mind the workman worked continuously for 241 days and sailed in o the harbour of Section 25B and Section 25F of the I.D. Act. In any case Sub-section (1) of Section 25B lays down that "if the cessation of work is not due to any fault on the part of the workman it will deem to be in continuous service." In the instant case, assuming that the workman did not work for a period from 17-9-1984 to 30-9-1984 it was not due to any fault on the part of the workman. Admittedly he worked during the above period, but was paid in the name of B. M. Gupta by the management itself. This action of the management amounts to unfair labour practice as held above.

9. Once a workman sails into the harbour of Sec. 25F of the I.D. Act his termination for whatsoever reason amounts to retrenchment. In the case of Mohan Lal V. Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) the Hon'ble Supreme Court held as under:—

"Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute

retrenchment except in cases in the section itself."

In AIR 1980 SC 1215 it has been even held that discharge for not passing test for Foreman amounts to retrenchment within the meaning of Sec. 25F of the ID Act. In the instant case, admittedly the management has not complied with the provisions of Sec. 25F of the I.D. Act. Therefore the retrenchment is void ab initio.

10. Coming to the relief I am of the opinion that looking to the nature of his services and the manner in which he was appointed, it will meet the end of justice if he is reinstated but without back wages. I therefore answer the reference as under:—

That the action of the management of National Insurance Company Ltd., Satna in terminating the services of Shri Laxmi Narayan Gupta, Clerk with effect from 15-2-1985 is illegal and unjustified. He is entitled to be reinstated with continuity of service and all ancillary reliefs like seniority and increments, etc., but without back wages. No order as to costs

V. S. YADAV, Presiding Officer.

[No. L-17012/56/85-D. IV(A)IR(B)-I]
PADMA VENKATACHALAM, Dy. Secy.

